IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 23-12825(MBK)
	.	
	.	Clarkson S. Fisher U.S.
LTL MANAGEMENT LLC,	.	Courthouse
	.	402 East State Street
	.	Trenton, NJ 08608
Debtor.	.	
	.	Wednesday, May 3, 2023
. . . . .	.	10:02 a.m.

TRANSCRIPT OF HEARING ON ORDER GRANTING IN PART AND DENYING IN PART THE MOTION BY MOVANT ANTHONY HERNANDEZ VALADEZ FOR AN ORDER (I) GRANTING RELIEF FROM THE AUTOMATIC STAY, SECOND AMENDED EX PARTE TEMPORARY RESTRAINING ORDER, AND ANTICIPATED PRELIMINARY INJUNCTION, AND (II) WAIVING THE FOURTEEN-DAY STAY UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 4001(a)(3) [DKT. 298]; MOTIONS TO DISMISS THE CHAPTER 11 CASE [DKTS. 286, 335, 346, 350, 352, 358]; DEBTOR's MOTION FOR AN ORDER APPOINTING RANDI S. ELLIS AS LEGAL REPRESENTATIVE FOR FUTURE TALC CLAIMANTS [DKT. 87]; THE OFFICIAL COMMITTEE OF TALC CLAIMANTS' MOTION TO SEAL THE REDACTED PORTIONS OF THE COMMITTEE OBJECTION [DKT. 312]; THE UNITED STATES TRUSTEE'S MOTION TO SEAL THE REDACTED PORTIONS AND EXHIBITS TO THE U.S. TRUSTEE OBJECTION [DKT. 322]; AND THE DEBTOR'S MOTION TO SEAL EXHIBITS

BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

Audio Operator: Kiya Martin

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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(Proceedings commenced at 10:02 a.m.)

THE COURT: Okay. Good morning everyone. This is Judge Kaplan, and we have LTL Management, LLC matters on for today. Are we okay? Yep, speakers.

All right. Good morning. We have quite a few matters on the agenda. And let me turn to Mr. Gordon or counsel for the debtor and see how you wish to proceed.

MR. GORDON: Good morning, Your Honor. Greg Gordon, Jones Day, on behalf of the debtor.

I think from our perspective, Your Honor, we're prepared to proceed in the order the matters appear on the agenda.

THE COURT: Okay. I think there's some matters that are not on there or at least my last look. So the first matter we have up for this morning contested that's going forward is the debtors' motion appointing Randi Ellis as the future talc claims representative. And this has been opposed.

There have been objections raised by various objectors including the Office of the U.S. Trustee. And let me turn to the debtors' counsel and do you want to lay out anything in addition to your papers?

MR. GORDON: You will not surprised to hear I have a PowerPoint presentation I would like to run through.

THE COURT: Then let's have at it.

MR. GORDON: Thank you, Your Honor.

THE COURT: I'll note Ms. Ellis and her counsel are in the courtroom.

MR. GORDON: And, Your Honor, we're supposed to have somebody working behind the scenes to bring this up on the screen. Someone is supposedly on the Zoom.

THE COURT: There we go. Well, I don't see it on that.

(Pause)

UNIDENTIFIED SPEAKER: Your Honor, can I approach?

THE COURT: Absolutely.

(Pause)

THE COURT: Would it help just to take a five-minute break?

THE CLERK: (Indiscernible).

THE COURT: All right. Why don't we go off record. We'll start over in five.

(Recess at 10:06 a.m./Reconvened at 10:08 a.m.)

MR. GORDON: Thank you, Your Honor. Again, Greg Gordon, Jones Day, on behalf of the debtor.

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So, Your Honor, just to set the table here, this is obviously the hearing on the debtors' motion to appoint Ms. Ellis as the future claimants' representative in this Chapter 11 case. And these are kind of the key points that I'm going to make in the presentation this morning.

Number one, that Ms. Ellis was appointed as the FCR in the first LTL case, and her appointment was approved by all parties, including I think everyone in the courtroom here today. And all the parties agreed she was qualified, they agreed she was independent.

And now we're at a point where she's coming here and we're proposing her after having her be involved in the first case. And based on that, we expected that her appointment in this case would be non-controversial. She's clearly up the learning curve, spent a lot of time educating herself on the facts and on the issues

But, instead, what we're faced with is a minority of claimants represented by firms we believe are conflicted by their own self-interest who now purport to strongly oppose this appointment. And the opposition, frankly is just based on blatant character assassination of Ms. Ellis. And I'm going to show you this morning through the slide deck that all these allegations of misconduct, of impropriety have already proven to be false.

And so from our perspective, this appointment should be approved. And what this Court should not countenance is objectors who are using this process to actually delay this case and to delay our ability to get to a vote in the hopes that they can avoid a vote on the plan that's supported by the large majority of the claimants in this case.

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Now I just wanted to set the legal framework for the application. A future claimants' representative, as Your Honor well knows, is someone who is required to be appointed under Section 524(g) of the Bankruptcy Code. If we want to get to the end of this case and have a channeling injunction in place, which is what 524(g) contemplates, we need a future claimants' representative.

We have the recent ruling in the Imerys case, relatively recent, where it's now been made clear that the FCR is someone who is to be able to act in accordance with, one, a duty of independence from the debtor and other parties in interest in the bankruptcy; two, someone who has a duty and can act consistent with a duty of undivided loyalty to the future claimants; and three, someone who has the ability to be an effective advocate for the best interest of the future claimants.

Back in LTL1, no one disputed that Ms. Ellis was able to meet all those requirements. And in this case, appointment is especially important and it's important early in this case because it will allow us, the debtor, to move forward with a plan as indicated is supported by the substantial majority of claimants. And as Your Honor knows, we've made commitments in the plan support agreements to file that plan by May 14th. We're only a couple of weeks away from that, and we need to

have a future claimants' representative in place with whom we can negotiate the details of that plan.

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So if you take a step back with Ms. Ellis, this is where we were I guess it was over a year ago when her appointment was first broached with the Court. She's someone who's well known to many parties. She's someone who's been involved in complex civil cases for a long period of time. She has national recognition as a fiduciary. She's been appointed in a variety of roles as an arbitrator, a neutral, a special master, guardian ad litem, and as a mediator. And that includes MDL matters and other mass-tort liability cases.

Well, she still has all those qualifications. Nothing's changed. Those qualifications continue to exist. She still has that same very relevant experience today that she had then. But, more importantly, she's now someone who served as the future claimants' representative in the first LTL case. As a result of that, she has knowledge about the debtors' current and future talc liability, she participated in the mediation in that case, she participated in the estimation in that case, and she's the only one who would be in a position if appointed to immediately engage in negotiations with the debtor and the other key constituencies on the plan terms that have been described to Your Honor.

So to us, that makes her uniquely qualified to serve

in this role. We won't find anybody who has the same qualifications because she's up the learning curve and she's been steeped in the issues and the facts that have to be addressed in connection with this case and the plan that's on the table.

Next slide, please.

Back in 2021, the support for her was universal. And we should remember that Ms. Ellis was actually proposed jointly by the two committees that were in place at that time. We referred to them as TCC1 and TCC2. And look at the comments that were made at the time by the parties that are now opposing her appointment today: "TCC2 worked cooperatively with TCC1 to both submit the names of three potential candidates and to strike two candidates submitted by the debtor. Ms. Ellis was among the three FTCR candidates supported and proposed jointly by TCC1 and TCC2 without qualification."

To go on, "Ms. Ellis can adequately and safely represent all future victims whose disease was caused by Johnson & Johnson's talc products."

Another statement in court, "We did file a letter indicating that we support Ms. Ellis' appointment, and we are certainly pleased that there would be a female in the mix if that were to occur."

So, again, the acclaim for Ms. Ellis was universal. No one was opposing her. She was actually proposed by firms

that today are now telling you that she couldn't possibly be appointed, that she should be rejected out of hand.

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Now, Ms. Ellis fulfilled her fiduciary duty. She performed her role as required following Your Honor's appointment of her in the first case. That appointment occurred on March 18th, 2022. She continued to perform her role through April 4th, 2023. And you can just see from the declaration that she submitted the things that she did. She gathered information from the Committee. She gathered information from the debtor. And with her experts, she did her own research.

She engaged in the mediation process in good faith, and, as she says, and I'm going to come back to this, she maintained her independence from the Committee and the debtor throughout the case. So why is it, Your Honor, she's no longer qualified? What has happened so that these parties would come in here now and engage in the character assassination that you've been seeing in their pleadings and hearing from them in court?

Next slide, please.

So there's been a series of accusations. So the first accusation is that Ms. Ellis continued to negotiate or mediate after the Third Circuit decision on January 30th of this year. That's accusation number one. Number two, Ms.

Ellis considered submitting but she didn't submit a declaration in support of this second bankruptcy case.

Number three is that unbeknownst to Ms. Ellis, her name appears as the claims administrator in the debtors' plan term sheet. And then, number four, she has not adopted the positions of these law firms and the U.S. trustee who oppose this bankruptcy case and the proposed plan.

Those are the four accusations we read their pleadings and you hear what they say in court, that's what they're accusing her of and that's why they're telling you you cannot appoint her in this case. So let's go through these one by one.

Next slide, please.

Okay, accusation number one, that Ms. Ellis continued to negotiate post the Third Circuit decision. So, first of all, Your Honor, what she was doing in that respect was required by Your Honor's mediation order in the first case. And that mediation order stated that, "The mediation parties" -- which included Ms. Ellis -- "will make a good-faith attempt to settle the mediation issues. The mediation parties either personally or through a representative with authority to negotiate and settle the mediation issues will make reasonable efforts to attend all sessions scheduled by the co-mediators to which they are invited to attend by the co-mediators."

She did that. And then in your text order dated

March 23, 2023, you stated the parties are urged to continue informal settlement negotiations. She did that.

Now the TCC filed pleadings, the U.S. Trustee, other parties, and they're shocked and amazed. They can't believe that she was actually involved in negotiations post January 30. And they say that even though they were doing the same thing. They were doing the exact same thing.

So next slide, please.

So we know from Mr. Molton, his deposition was taken. He was directed not to answer questions about his conversations with Ms. Ellis, but by just having this objection made, he's basically reflecting that they were having these negotiations or discussions with Ms. Ellis. And, frankly, this activity is confirmed by the TCC professionals' own time entries.

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So this is just a few of them, Your Honor, but looking at their fee applications for January and February, just go down the list. These are descriptions of time based on settlement discussions, plan alternatives, and the like. You got Brown Rudnick, Otterbourg, FTI, the Brattle Group, and there were others, as well. I think in total, there were over 2025 hours spent on settlement and mediation matters in the first month following the Third Circuit's decision in that February time frame.

And so for them to accuse her of engaging in

misconduct for the very same conduct they were engaged in just shows how weak and spurious these allegations are.

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And Mr. Molton, he had reached out to me by email on March 24, well, that was almost two months after the Third Circuit decision, "Consistent with the Court's text order, the ovarian cancer representative of the TCC have prepared a proposal that would resolve present and future ovarian cancer claims." Well, I guess he engaged in misconduct by sending that email even though, again, it was strictly in accordance with, as he references, Your Honor's text order.

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So in accusation number one, that is not a legitimate basis in our view to reject the motion for her appointment. Just absolutely no basis whatsoever for that.

So the second accusation goes to the draft future claimants' representative declaration. So if we start here, Your Honor, where this gets its start is in a board presentation which was turned over to the other side in discovery in connection with the PI motion. And that board presentation reflected the debtors' belief at that time, this was on March 28th, that Ms. Ellis would sign a declaration in support of the Chapter 11 case and that she might sign a plan support agreement.

And in the box underneath, we actually have the exact

language out of the board minutes, "Separate discussions have occurred. FCR is supportive of a second Chapter 11 case in the event the current case is dismissed. FCR has agreed to sign and submit a declaration in support. In addition, discussions are ongoing to obtain a plan support agreement."

That's what's contained in those -- in that presentation. That was the belief at the time.

Next slide, please.

Then we have April 2 board minutes. These are also produced in the PI proceeding. And they clarified that Ms. Ellis has decided not to submit a declaration -- she did not -- and/or agreed to any plan terms.

And, again, the language appears in the box underneath: "Since the March 28th board meeting, the FCR determined not to submit a declaration in support of a new Chapter 11 case or agreed to the terms of a plan of reorganization for the company described in the plan support agreements, though the FCR remains supportive of a new Chapter 11 case and the resolution of future talc claims in bankruptcy."

That's what comes out of the documents produced in discovery.

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And this was confirmed in the deposition taken of Mr. Kim. You can read down, and he basically acknowledges exactly

what happened in terms of the board meetings:

"Q The question is FCR's agreed to sign and submit a declaration in support of a new Chapter 11 case." Those are the words, right, that comes out of the board presentation. "A That's exactly right. The filing of a new Chapter 11 case.

"Q And it was later reported that was not happening. And then later it was reported that she was unwilling to sign a declaration, right, that she chose not to --

"A Yeah.

"Q -- sign a declaration. And the FCR and Ms. Ellis chose not to execute that, as well, correct?

"A Correct. Any plan support agreement she did not choose, she did not submit any plan support agreement."

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THE CLERK: I've just been told that the wi-fi dropped out.

THE COURT: There we go.

All right. We'll have a reminder please discontinue any use in the courtroom of the Court's wi-fi unless necessary. Thank you.

MR. GORDON: So, Your Honor, what was in the documents was confirmed by Mr. Kim's testimony. And then from Ms. Ellis' declaration where she says, "I decline to sign a

declaration in support of the filing." She said she was generally aware plan discussions were ongoing but was not involved. And she said she was not aware of terms of plan support agreements and could not have accepted them without more time.

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And this had just a couple of the paragraphs right out of the declaration that has the actual language:

"I was approached to provide a declaration. I considered such because the Court encouraged the parties to continue settlement efforts, and I believe it would have been a dereliction of my duties not to consider any proposed resolution options. After consideration, I declined to sign the declaration."

"While I was generally aware there were ongoing discussions about a proposal of a plan, I was not involved in any discussion or negotiations regarding a plan or plan support agreement. I was not aware of the terms set forth in the plan support agreement. and had I been aware of such terms, I would have needed additional time for my retained professionals to review the terms, complete their work, and advise me before I could make any decision."

That's the record, Your Honor, on this point, on this accusation about this improper activity engaged in by Ms. Ellis

that she would submit a declaration, which she never did. She never did.

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So the third accusation goes to the issue of the claims administrator. And, again, this was explored at length in the discovery that was taken in connection with the PI motion. So starting with Mr. Murdica, he was asked about this in his deposition and he said he thought that Ms. Ellis would be a good claims administrator to promote an efficient claims process.

But look at what he said in his deposition.

"A It's a placeholder because the claims administrator, if you look later in the document, is the one who would decide on the amount of the quick pay. And that would have in my view the most significant ramifications for an FCR."

So he's saying it's a placeholder, and he's describing why he thought about Ms. Ellis as the placeholder at that time.

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Mr. Watts, his deposition was taken, as well. He pretty much said the same thing that Mr. Murdica said about Ms. Ellis. He says:

"A Ms. Ellis has a superior knowledge base to anybody else Mr. Watts could think of for the role which would promote a situation where the claims were being administered as fast as

they can with the goal of paying every existing client within one year of plan confirmation."

So that's what he's thinking. But the next slides I think are critical.

Go to the next slide, please.

But on the question of whether Ms. Ellis knew anything about this, the record is again consistent and clear. To Mr. Murdica:

"Q Did you have any conversations with Ms. Ellis about her serving as claims administrator?

"A No.

"Q Do you know if anybody did?

"A I don't know, but I don't think so. I'm not even sure you can be an FCR and a claims administrator. So it was just a placeholder."

Next slide.

Same for Mr. Watts:

"Q And did you have any conversations with Ms. Ellis about her potentially serving as claims administrator?

"A So I don't recall that. I don't recall a specific discussion with her about her serving as claims rep, claims administrator, although I do think she is the individual most highly qualified to do so."

But if there were any doubt, then you look to what Ms. Ellis has to say about this.

Next slide, please.

From her declaration, "At no time was I offered, nor did I seek or accept any promises in exchange for supporting any parties' position. I have no knowledge of my name being included on documents prepared by the debtor as a claims administrator of any proposed settlement or plan and had no control over the actions of the debtor."

Again, all of this is completely consistent. The record establishes again that these accusations just have no foundation at all with respect to the objections that have been leveled at this point against Ms. Ellis.

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So accusation number four, that Ms. Ellis, she should be disqualified because she hasn't adopted the positions of the objecting parties in this case. And you can see this from just reading the objections themselves. And they make clear that no one would be qualified as an FCR candidate in this case unless they were to support the minority position that's being advanced by the law firms that are making so much noise in this case.

So from the Maune Raichle opposition and there's many examples but here's one,

"Unless and until there was credible evidence that the debtors' liabilities, not including J&J's independent non-derivative liabilities, exceeded $61

billion. Ms. Ellis' only duty under Third Circuit precedent and state tort law and the Constitution of the United States of America was to preserve future claimants' rights to full recourse in the tort system, in other words, dismissal."

That's why Maune Raichle's opposing her. That's why Maune Raichle has objected to her fee applications in the other case. She thinks she had no business talking to anybody about a potential consensual plan in a bankruptcy case and, for that reason, she should be disqualified.

Similarly, with Paul Crouch, "Any appointment of an FCR at this time would have to be limited to protecting the state law jury trial rights of future claimants against the debtor." Unless you agree with us that the case should be dismissed, you are not qualified to be a future claims representative. So think about that.

These parties that come in here and tell you that she should be disqualified because she's not independent are telling you that the reason she should be disqualified is because she's not aligning with them. That's the exact opposite of independence. She should not be appointed because she hasn't come up to this podium or filed a paper that says I agree this case should be dismissed, I agree this plan should not go forward, I agree that the majority of claimants shouldn't be allowed to vote. That's why they want her

disqualified.

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And, again, I don't think there's any question based on this record that Ms. Ellis is independent. She said she understands she has a duty of independence. She says she maintained that independence from both the TCC and the debtor. And we know that she has because she has not adopted the position of the minority of claimants. We know that because that's why they're complaining about her, and we know that she didn't submit a declaration in support of this second case. We know she didn't sign a PSA so she's not aligned with us either. That doesn't show bias. That establishes her independence.

Next slide.

So nobody's lying. I can't tell you how many emails that we're seeing like this. We need to get to the bottom of who is telling the truth and who is lying prior to the Court hearing argument on the appointment of an FCR. Nobody's lying, Your Honor. I just showed you the record. The testimony is consistent. They can say that people are lying, but they have had discovery, they've seen the documents, they've taken depositions, they know that nobody's lying and nobody is.

Next slide.

So just to conclude, Your Honor, Ms. Ellis has the same qualifications and the same experience she had when you appointed her the first time. In addition to that, she now has

considerable knowledge, understanding of facts and issues that no one else has. The objectors' accusations of bias and misbehavior are not supported by the facts. They're belied by the facts. And, in fact, they're undercut by the objectors' own actions. The things that they complaint about her doing, they did the exact same thing.

Ms. Ellis has done nothing wrong. She's done nothing to deserve the criticism that she's been receiving by these firms representing a minority of the claimants in this case. And we would ask that Your Honor appoint her as someone who's imminently qualified as everyone agreed before, who is independent, she has displayed undivided loyalty to the future claimants.

THE COURT: All right. Thank you, Mr. Gordon.

MR. GORDON: Thank you.

THE COURT: Either for the TCC?

MR. MOLTON: Your Honor, we've discussed the order. David Molton, Brown Rudnick --

THE COURT: Yes.

MR. MOLTON: -- for the TCC -- proposed counsel for the TCC. We've discussed the order. And Mr. Maimon's going to go first followed by a few other objectors. The TCC will then follow up, and I think the U.S. Trustee will be --

THE COURT: Perfect.

MR. MOLTON: -- going last.

THE COURT: All right. Thank you.

Mr. Maimon?

MR. MAIMON: Thank you, Your Honor.

May I, Your Honor?

THE COURT: Yes, please.

MR. MAIMON: Thank you.

THE COURT: Thank you.

MR. MAIMON: Thank you, Your Honor. May it please the Court.

There are multiple independent grounds requiring the denial of the instant motion. You will hear from others with regard to various aspects of each of those independent grounds. What I'd like to concentrate, Your Honor, are the facts that deal with one aspect of them that hopefully cover many of them, but we're trying to coordinate that.

Histrionics aside and a self-imposed and imposing on others deadline aside, this is a new case which requires the Court to deal with motions that are brought anew. And it really doesn't matter what happened the first time and Ms. Ellis' appointment the first time or, quite frankly, as far as I'm concerned, her qualifications and her history as serving as special master and as serving as a guardian ad litem, although guardian ad litem we all know is very very different because a guardian ad litem represents those who are incompetent. No one who Ms. Ellis seeks to represent the interests of is

incompetent. And we're going to see why that's very important with regard to the inevitable conclusion that this motion must be denied.

This gets down to the deal that was made between Johnson & Johnson and various law firms who claim to support their efforts. Over and over, the mantra is majority minority, it's an illusion. it's false. There's no evidence to support it. There's just the debtors' claims and their lawyers' claims, and a bunch of first names on a bunch of lists.

But there's no record in front of this Court of any support for a plan aside from lawyers, no record in front of Your Honor with regard to any claimant supporting it. And the insistence to keep saying it and saying it and saying it over is the attempt, quite frankly, to normalize the outrageous.

Mr. Watts testified that it would be outrageous to a claimant at this point to seek support. It would be a violation of the Bankruptcy Code, the anti-solicitation. And yet, we hear it over and over and over again because when you have nothing else, you have to normalize the outrageous.

This sensational deal for $8.9 billion, which is also illusory, is embodied in the plan support agreements. And there are several aspects to that which bear upon the motion that Your Honor has in front of him. First of all, we know that the plan support agreement is dated, it's dated March 21st, 2023, including all the exhibits. And we know that

Exhibit B is the term sheet to the plan, and that is the material terms of the Chapter 11 plan of reorganization. These are the material terms.

And so we are going to look at what those material terms are and what Ms. Ellis' role was in getting there not in trying to settle anything but what her role was in that regard. But there are other aspects to the plan support agreement which are important.

Number one, the rule on amendments. And because LTL, the debtor, is a debtor in possession, it cannot without the permission of this Court amend any contracts. And so this contract which we're going to see cannot be amended.

Number two, it says, it's the entire agreement. And so there is no parol evidence. There is no intentions. There is no placeholders. There's nothing else. This is the entire agreement pursuant to the contract. And contract laws in New Jersey are very clear on this.

And, finally, specific performance that the debtor acknowledges here that there is -- this is not something that can be cured a breach of by simply damages. And so this is the deal. And, ultimately, it's the term sheet which are the material terms of the deal.

So let's take a look at what they are. And there are three critical terms that are dispositive of this motion. Number one, Randi Ellis will be the claims administrator. It's

not the TCC that's making it up. It's not Mr. Crouch. It's no one. It's the term sheet that LTL entered into and J&J entered into with these lawyers.

Number two, she agrees that no more than one-third of the trust of the trust corpus will be assigned to future claimants. Those are people that supposedly she has a fiduciary duty to represent.

And then, number three, that the existing claims are cut off as of April 1, 2023. We'll see those in turn.

Number one, Randi Ellis shall serve as claims administrator of the talc trust. Shall, not perhaps may. Not somebody, and we'd like to think she would be a good person. This is the contractual language, these are the material terms that they chose. She shall serve as claims administrator, and we'll see what her role was as shown by the evidence as opposed to the self-serving statements of her declaration.

Number two, the qualification and payment terms contemplated below where J&J pays that $8.9 billion are contingent on. And Mr. Kim in his testimony at the hearing on the 18th acknowledged this that the future claims representative, and at that time the only future claims representative was Ms. Ellis -- this is March 21, 2023 -- her agreement that she will not assign more than one-third of the trust corpus to qualifying future claims.

And so we have the "shall," that she shall be the

claims administrator, and we have that she will not assign more than one-third. But as claims administrator, it defines her duties as allocating proceeds to be distributed amongst all existing and future claimants. There is absolutely not way that those two things can be reconciled either legally or under any ethical code that governs bankruptcy court, New Jersey courts, any courts in the country. Those simply cannot be reconciled.

But there's more. This supposedly, and this deals with the ovarian cancer claims, this is $6.5 billion for existing and future ovarian cancer claims. That's what the deal calls for. However, the deal also delineates what is an existing claim and what is a future claim. And the cutoff date that they chose is April 1st, 2023.

Why is this important? Well, it's important for two reasons. First is the reason that Mr. Watts told us about in his deposition. He told us that this was his idea. And what he wanted to make sure is that after the big sensational headlines of $8.9 billion was announced on April 4th when they filed the second petition, somebody didn't do what he did, which is go out and mass market and get a bunch of claims that would dilute the value of his existing claims.

And so if you cut off those existing claims as of April 1st, 2023, which is what the agreement does, the material terms of the agreement, the value to him and his clients and

all of J&J's PSA partners is maintained. Is that some small thing? It's not. Two-thirds of the trust corpus for the ovarian cancers is to existing clients. That's $4.3 billion. If they have 75 percent, which they don't and which is simply made up, but if they do, that's $3.25 billion or 3.25 billion reasons why April 1, 2023 is an important date.

But it's important in one other regard, Your Honor, that impacts this motion. Under bankruptcy law, only present and existing claimants can vote on confirmation. Future claimants are represented by an FCR. The claimants themselves cannot vote on confirmation. The FCR cannot vote on confirmation. The FCR can only object to confirmation.

And so what happened here is J&J and its PSA partners dealt away the voting rights of every woman diagnosed who retained a lawyer between April 1st, 2023 and confirmation. If you believe Mr. Watts and Mr. Onder and all those where they put that slight in front of you on the 18th to show -- or the 20th, I forget, I think it was the 18th to show how many new claims, unfiled claims there are, there were 40,000. Assume half that number, that would be 20,000 women diagnosed or retaining lawyers after April 1st, 2023 who don't get to vote. They've dealt away their rights to vote.

And so while the lawyers and J&J's PSA partners are dealing away rights, lawyers like Andy Birchfield and Jason Itkin are looking to maintain the rights that their clients

have. And this is one of the major reasons not addressed by J&J, not addressed by LTL, not even touched upon by Ms. Ellis in her declaration, which means you can't do this. This agreement cannot have Ms. Ellis and her agreement to just give away people's right to vote.

What else? Well, Mr. Watts also testified that he's not done signing up people. We deposed him I think it was the 16th or the 17th, I think it was the 16th of April before the hearing in front of Your Honor on the 18th, and he said, Well, I know that the first ovarian cancer case that I signed up was in March of 2022. The last one, probably yesterday. They're still coming in.

Which makes another conflict. The FCR now represents the interests of people who retained Mr. Watts. Mr. Watts could have brought in a new client who signed a retainer with him on April 17th, April 16th, April 15th, but because of the April 1st cutoff, their interests are represented by Ms. Ellis.

Yes, Your Honor?

THE COURT: Counsel, if I may? I just want to clarify. So according to your position on what this means, Mr. Watts' new clients or anyone who comes in would be deemed a future claimant and not voting.

MR. MAIMON: Correct.

THE COURT: But wouldn't -- since Mr. Watts is supportive of the plan, of the settlement that's been proposed,

wouldn't he want his claimants to be able to vote and be included in the 75 percent?

MR. MAIMON: No.

THE COURT: Why not?

MR. MAIMON: Because he's already got 17,000 of them in the bag which if you believe him, they're in the bag and they're going to vote yes, and they can't be diluted anymore. He's maintained --

THE COURT: Well, from a financial perspective. But for voting, you would think knowing that there's a 75 percent bar or a threshold, none of it means anything if he can't reach that 75 percent.

MR. MAIMON: Right. But what if somebody else dilutes not only financially but vote wise? He believes he's got it. He believes he's got in the bag. He made the deal with Mr. Murdica. He told them I've got the votes, I got them for you. Don't let anything be diluted, that's the way this is set up.

And we'll see that Ms. Ellis not only is conflicted because of that, legally conflicted because who represents the interests of those clients. According to the term sheet, it's Ms. Ellis. According to Mr. Watts and the ethical rules that he is governed by because he signed retainers with those people, it's him. He's given away their right to vote.

THE COURT: So your position is any FCR would be

conflicted in that?

MR. MAIMON: No. Well, I think that --

THE COURT: Right?

MR. MAIMON: Well, I think that this is a -- part of what happens, Your Honor, when we have motions like this is the rot within the core of the scheme, it comes out. I think that having dealt away voting rights for people is a major problem. And because it's a material term to their plan, it's a major problem. It can't be overcome.

But it's certainly not something that Ms. Ellis can sign on to. And we're going to see what her role was in this which we believe disqualifies her.

Okay. Number two, so we know that as of March 21, 2023, the terms of the deal are that she will become claims administrator to allocate amongst existing and future claims. She will already have agreed that future claimants get less than a third of the $6.5 billion for ovarian cancers. We know that the number of future claims is now inflated, and their value is lessened because of a cutoff of April 1st. And we know that their rights to vote have been sold down the river.

So what happened after this deal was done? What happened after March 21st, 2023 which is the date of the PSA? Well, we know that Mr. Murdica and his partners had extensive conversations and correspondence with Ms. Ellis about the BK declaration, the bankruptcy declaration. This was March 22.

And they drafted a declaration for her to sign in support of their new Chapter 11 case. We know that there was correspondence back and forth. Did we get it back, was it signed? We know that there was different versions, and it went through drafting. So this is not something that was simply maybe she'll do it, maybe she won't. But it went through different versions and different drafting. And we know that there was a push to make sure that this is done and done on time and can we get this done.

And so what do we know? We know that as time went on and we're up to March 26th now, they're setting up Zoom calls. On March 28th, the board of LTL meets. And this is important because we saw part of this, but Mr. Prieto using a presentation talks to the board about the support of the potential -- the FCR support of the potential filing of a new Chapter 11 bankruptcy case.

We know that the centerpiece of the new strategy was to terminate the old funding agreement and replace it with a much more inexpensive and detrimental one, less detrimental to J&J's interests. But now in support of this plan, in support of the whole scheme to get rid of the funding agreement, to file the second bankruptcy, Ms. Ellis' support is being used to talk the board into approving it.

And what do they say? The presentation on March 28th, exactly here. No self-serving declaration can get around

this. The FCR has agreed to sign and submit a declaration in support of a new Chapter 11 case, period, hard stop. There's no qualifiers, there's no nothing here.

If there's a new Chapter 11 case, and at this point, correct me if I'm wrong, en banc had already been unanimously denied by the Third Circuit and all that was pending was the dishonest motion for a stay because they claimed that they were going to go to the United States Supreme Court. And, meanwhile, what they really had planned was getting all their ducks in a row to refile for bankruptcy.

And in addition, discussions are ongoing to obtain a plan support from the FCR. So why didn't she sign the declaration? She doesn't say in the declaration she put in here. J&J doesn't tell us why even though they knew why, because this is Ms. Ellis on the 23rd back to Mr. Murdica and his partner.

Quoting from Paragraph 2 of the declaration that they sent her, "I served as the FCR" -- from that date when Your Honor appointed her -- "until the Chapter 11 case was dismissed" -- on such-and-such date. And her notes, "I am still serving. It's a hard to sign as-is. Thoughts?" Well, what does that mean? First of all, it contradicts the declaration in support of this motion.

What I hope it means, what I really hope it means and, quite frankly, having had an opportunity to meet Ms.

Ellis, what I trust that it means is that she realized that she had an irreconcilable conflict while the first case was pending to do this. I don't think it's been well thought out that that conflict is anywhere gone, but she had a conflict.

What's the conflict? The ovarian cancer conflict. She as FCR had a duty of undivided loyalty to the future claimants in the first bankruptcy, not an abstract duty. A duty of undivided loyalty to those people. And if we're talking about the ovarian cancer victims, to the women diagnosed with ovarian cancer after confirmation or effective date, depending on which date was used to define what the future claims are. She had a duty to them.

She also had a duty to make sure that anyone who had interests adverse to the people she had the duty to she had to protect her fiduciaries. And so what that means is that for LTL1, all of the women with ovarian cancer who were present claimants, she did not have a duty to them. In fact, she had to protect her -- the people she had a fiduciary duty to, the future claimants to the extent that there was any adversity.

Now we have LTL2. And we have the now imposed April 1, 2023 cutoff date. Those same future claimants are still there. You can't get rid of your fiduciary duties just because a case ends. It doesn't work that way. She still has duties to those people who Your Honor appointed her to represent in LTL1.

But what happens with the people she was adverse to in LTL1? They now become her clients. They're now there, and she owes them the same fiduciary duty that she had with people who were adverse two months ago. That is an irreconcilable conflict. I don't understand why -- I understand why the debtor doesn't want to talk about it. I don't understand ,March 21, 2023, Randi Ellis was the future claims representative appointed by the bankruptcy court. According to J&J, according to the contract, according to LTL, according to Mr. Watts, according to the verified complaint, she agreed to this. Now she may want to come in and disavow that.

But for the reasons that my colleagues are going to talk about, the Court cannot ignore this and the Court cannot appoint her in its face. And so what would we have, at the end of the day, we have a deal stemming from negotiations with Ms. Ellis and agreed to by Ms. Ellis that, number one, asserts that she shall become the future -- that she shall be the claims administrator to allocate amongst existing and future claims, that she already as a contingent term, that the whole deal is premised on will have agreed that the future claimants gets less than one-third of the $6.5 billion allocated to the ovarian cancer victims.

That the future claims are numerically inflated and dollar-wise devalued by setting a cutoff date as of April 1, 2023. Those are the people that they claim she's going to

represent. And their voting rights have been dealt away.

The facts are so damning, Your Honor, that you need a PowerPoint that doesn't talk about this case and what happened here but just talks about expedience and hysterical claims of a majority wanting to do this and please let us vote at the same time that they're disenfranchising those very people. I appreciate the Court's indulgence. Thank you.

THE COURT: Thank you.

Mr. Satterley?

MR. SATTERLEY: Yes.

Good morning, Your Honor. Joe Satterley.

THE COURT: Good morning.

MR. SATTERLEY: Kazan McClain Satterley & Greenwood. The good news is I don't have a PowerPoint for this part, and I'm going to be brief.

First, what's going on here, the debtor wants this FCR quickly so they can cram down this case. As I argued on the 18th, that's what this is about. They want a cramdown. We object to this process. Your Honor, in the first LTL, engaged in a process where names were submitted and people were considered. That process should occur in this new bankruptcy, and it shouldn't be a cramdown of a plan, and it shouldn't be a cramdown of an FCR.

I only have a couple of points. Mr. Maimon hit on most of them. I do object to Mr. Gordon's statement. He said

it four times, A minority of claimants who are conflicted by their own self interests. I agree with Mr. Maimon, if I have any conflicts, report me to the bar. My clients who probably many of them are watching, and some of them are after April 1st, know that I don't have a conflict and that I have their interest in my heart.

The second point i would make is, quite frankly, there doesn't need to be an FCR appointed right now. Your Honor has a motion to dismiss pending. If in fact we get to a point that there needs to be an FCR. the Court should keep in mind that this is a full value plan. There's at least $61 billion that is guaranteed according to the first funding agreement.

A couple of points regarding their PowerPoint. Slide Number 24 is quoting me Friday night at 10:00 Eastern Time. 7:00 I was in San Francisco on a date, and I sent this email because it became obvious, it became obvious --

THE COURT: Too much information. Go ahead.

(Laughter)

MR. SATTERLEY: It was a fun date. But I think the Warriors were playing, also. They lost.

But I sent this who was lying because it became obvious to me just comparing the declaration of Ms. Ellis to what was submitted to us before the 18th and on the 18th, there was definitely something not true. So I asked her for

deposition on Friday night, and I was never obviously given her deposition.

At this point, it's not necessary because it's so obvious that she cannot serve in the roles of an FCR. Her declaration, by the way, we got -- I did serve a subpoena and last night while I was at the Knicks games, we got several documents. And her draft declaration that was sent to her that she did not sign was prepared and written by J&J, by J&J. She didn't prepare it. She didn't write it. It was prepared by J&J.

The declaration that she did submit on Friday night on Paragraph 7, says she didn't support a plan and she uses the word by the debtor and others, but she leaves out J&J. Paragraph 7 of her declaration leaves out specifically the words J&J. And it's very artfully written to leave out J&J because it's obvious through the emails we got last night that she was meeting with Mr. Murdica, emailing with Mr. Murdica, seven or eight Zoom meetings.

The future clients do not need someone to serve as a future claims representative who has been working hand in hand with Jim Murdica and J&J for the last several weeks.

The last point I would make, Your Honor, is Counsel said mediation was -- there was a mediation order, Your Honor ordered a mediation. I participated in all the mediations that Your Honor ordered. And that mediation order specifically said

the mediation should occur with the TCC. And certain other folks back at the time in 2022 wanted to participate in the mediation, and Your Honor did not allow them. The TCC, the FCR, LTL, J&J was all there.

The mediation order did not say that the LTL could go out and find a bunch of unknown lawyers and that would constitute a mediation. So I would object to the notion that they were simply just working in compliance with Your Honor's mediation order.

Finally, I just object to the declaration of Ms. Ellis submitted on Friday as hearsay. And today's not an evidentiary hearing, so there's not going to be any testimony given. But I would object under the Rules of Evidence that that's hearsay.

And the submission by Mr. Gordon regarding Mr. Murdica's testimony, once again, today is not an evidentiary hearing, so those were improper. And those questions were asked in relationship to the PI motion, not the FCR motion. With that, Your Honor -- yes?

THE COURT: Don't go. I just have a question.

MR. SATTERLEY: Okay.

THE COURT: Both of you and Mr. Maimon, I think, referenced the supposed discussions between Ms. Ellis and Mr. Murdica, or the debtor, and there are, and this Court has had prepack asbestos cases where there's been a lot of activity

prepetition with a potential future claimants rep who's not yet appointed but who acts as a fiduciary. And there's obviously communications. Why is it problematic here?

UNIDENTIFIED SPEAKER: Can I answer that?

THE COURT: If you look at it as a prepack or even though maybe for two hours, 11 minutes is a prepack.

MR. MAIMON: So if for a month and a half, because we know that's how long it was going on, it was going on for two months ever since the Third Circuit opinion. If they had gone to somebody else and said, we're going to do a prepack like any prepack, we need you to be the FCR, and we want you to be fully informed, that would be a different issue. When she did this for this so-called prepacking bankruptcy, she still was the FCR for those and she had the fiduciary duties to the future claimants in LTL 1. She cannot be the FCR for the claimants in LTL 2. It's a clear conflict.

MR. SATTERLEY: It's a simple --

MR. MAIMON: That's the problem.

MR. SATTERLEY: -- simple answer. She was already in the capacity of FCR at the time this was going on when all these secret negotiations were going on with these unknown attorneys. So I hope that answers Your Honor's questions.

THE COURT: All right.

MR. SATTERLEY: And I didn't address the law because Mr. Molton, I believe will address the law. But under the law

that he will address, she cannot be appointed.

Thank you, Your Honor.

THE COURT: All right. Thank you, Mr. Satterley.

Mr. Molton, or Mr. Thompson.

MR. MOLTON: We're going to let Mr. Thompson go based on his assurance to me that he's going to be quick.

THE COURT: They always try to cabin you, Mr. Thompson. It's --

MR. THOMPSON: There was no assurance. I'm kidding.

So, Mr. Gordon is absolutely right about what my position is. He quoted it exactly right. Until there's evidence that their liabilities exceed $61 billion, we don't need an FCR.

Addressing your last question, so the debtor attached to its reply a bench ruling that you gave in Duro Dyne. And I believe that was a prepack.

THE COURT: Yes.

MR. THOMPSON: And this is at Page 14 of the transcript from the debtor's reply, so this is you speaking. Because there was some challenge to Mr. Fitzgerald's [sic] independence. And there, there was negotiations between an ad hoc committee of creditors. You know the case better than I do. But my understanding is, there was an ad hoc group of creditors, proposed FCR, and the debtor negotiating. And Duro Dyne was in financial distress and J&J is not.

But, this is you, "As to his pecuniary interest in being appointed, Mr. Fitzpatrick confirms, and the Court again finds credible, that he never demanded nor requested appointment as a post-confirmation FCR. The practice was just followed in a way that had been done in the past in prior cases."

Further down on Page 14 of the transcript that was attached to the debtor's brief, "According to Mr. Fitzpatrick, it is offensive to him to suggest that the $2,000 in monthly income is sufficient to persuade him to undercut or sell out his applications to future claimants." So he was getting paid about $2,000 a month. Ms. Ellis has billed about $900,000 in this case, and one of the things she wanted to make very clear in her declaration is that she is still owed $76,000. In addition to that, that she wants, she's billing $1,000 an hour, Mr. Fitzgerald [sic] getting $2,000 a month. And then the other concept I wanted to touch on from Duro Dyne was, "Mr. Fitzpatrick," this is you, bench order, "did not act at the direction of the debtors, did not receive salary or benefits. His billing averaged $2,000 a month. There was no deal in place with the debtors and the ad hoc committee that he engaged in substantial negotiations and worked toward modifications of the existing and initial term sheet." He further testified that he would never accept an assignment in which he was brought in at the last moment to rubber stamp.

What we have here -- so that's Fitzgerald [sic]. That's Duro Dyne. That's a legitimate distressed bankruptcy. Okay. What we have here is the lawyer for J&J. This isn't even the debtor. This isn't even the debtor. This is Mr. Murdica, J&J's lawyer, allegedly. The debtor and J&J are adverse, right, because the debtor has got to maximize the estate. But it's not the debtor. It's Mr. Murdica. And Mr. Murdica drafts a declaration for her to sign. He drafted it. He wrote it. Or someone at his firm did. He sends it to Ms. Ellis and Ms. Ellis rubber stamps it. And the only change she has to that, that Mr. Maimon I think pointed out, was, well I'm still the FCR. I haven't been removed yet.

And so her only change was, I still am supposed to be representing future victims in the first case so that change needs to be made. This is just so opposite of Duro Dyne and it's so opposite of Imerys, right. And one of the things that you noted in the Duro Dyne opinion was the Congoleum decision, 2005, from the Third Circuit. And that's a different issue. That was an insurance counsel matter, right.

But the Third Circuit at Page 693, "As this case demonstrates, leaving the procedures for allocation of resources predominantly in the hands of private conflicting interests has led to the problems of fair and equal resolution. The need for counsel and undivided loyalties is more pressing in cases of this nature," another prepack, "than in more

familiar conventional litigation."

So what Ms. Ellis has done in this case, touched by Mr. Maimon, which I adopt all those arguments, disqualifies her. The question is, how is this going to look on appeal? Because if she's appointed, we are going to appeal it. How is this going to look to future victims that you have their representative rubber stamping a declaration that she supports a second bankruptcy for J&J? How's that going to look? Right. That's who she's allegedly representing.

And there's been some comments about bar complaints and other stuff, about the representations. About every other day, Mr. Haas releases a press statement about how greedy some of the minority of the plaintiff's firms are and we're acting against our clients' best interests.

The term sheet, the term sheet that contains all of these wonderful details about how great their plan is, confidential. So they could say all this stuff about how greedy we are and how we're going against our clients' interests, but the term sheet that has the actual money that would be paid, that's confidential, we can't talk about that.

Okay. We have the benefit of seeing how Ms. Ellis operates as an FCR, so it doesn't matter what people said in March of 2022. Does not matter. Completely irrelevant. We've seen how she behaves as the FCR. This is an unlimited fund case where the debtor told the Third Circuit, "We've got $61

billion floor," not ceiling. "We got $61 billion of floor," so there's no resolution that the FCR can ethically support for less than $61 billion.

The whole point is to protect the rights of the victims, and so I want to talk briefly about how the Supreme Court and the Third Circuit talks about rights. And in Imerys, what the Third Circuit said was, at Page 375, "The Code does not explicitly lay out FCR appointment standard." Mr. Molton will talk about this in detail, but they cite the statute, 524(g)(4)(B), "You need a legal representative to protect the rights." That's the word the statute uses, "rights," okay.

That's what her job is to do, is to protect rights. Well, what are rights? Rights are constitutional rights. Rights are state law remedies. All of these claims are state law remedies. Ms. Tolleson has a state law based claim against J&J. Minnesota was where she was exposed and New Jersey was where all the decisions were made. These are state law claims. They have a right to pursue all state law remedies in state court. They have a right to due process.

This is Judge Fuentes at the hearing in this case at Page 22 and 23. "I assume that," he's referring to future victims, "would protect people who were exposed down the road. They," future victims, "would not be subject to bankruptcy, of course. They would be protected." How the Third Circuit views protection is full unfettered access to the tort system.

Imerys, "Effective advocacy and undivided loyalty. This record reveals a complete absence of independence, a complete absence of inability to effectively advocate for future victims." Skipping over a lot of stuff here because Mr. Molton told me I needed to.

I go to Ortiz, right. So Ortiz is the class action. I've cited this more times than you want to read me cite it, right. But it's a class action and it failed. And what the Supreme Court of the United States said was, "Fiberboard's assets available for claimants." Fiber Board listed its supposed entire net worth as a component of the total and allegedly inadequate assets available for claimants but subsequently retained all but 500,000 of that equity for itself. On the face of it, the arrangement seems irreconcilable with the justification of necessity in denying any opportunity for withdrawal of class members whose jury rights will be compromised," -- and this is the key part -- "whose damages will be capped, and whose payments will be delayed." The kinds of jury rights that exist in a legitimate 524(g) financially distressed company, TDP, are not the same as what the Supreme Court is saying here. Capped damages unconstitutional. And all of these victims, ovarian cancer and mesothelioma, have state law rights to uncapped damages. Those are the rights that the Circuit cares about. Those are the rights the Supreme Court cares about.

And then, if we look to -- and, again, we don't have to wonder about what Ms. Ellis is going to do as an FCR because she's already done it. She did it in the first case. She came out in July and said, with expedited existential appeals pending, there is every incentive for the parties to move as quickly as possible to seek compromise. Future claimants do not exist until plan confirmation. So she's the one person, the one party in interest in this case to where timing is not a factor. Why is she so eager to bind tens of thousands of people to capped damages trampled upon jury access? That disqualifies her.

I tried to be helpful. I objected to her fees and expressed my opinion about why she shouldn't be getting fees after the Third Circuit decision, and she never really addressed through her counsel my arguments, but she did say that her job, and this is her response, 3816 document dated March 2nd, "The Walsh firm and their experts will continue to represent the interests of future claimants as they in their professional judgment deem necessary with the goal of maximizing recovery either," either, "by way of future litigation or settlement."

So what she's saying there, I think, is it's her job. Her job. One person is going to decide for tens of thousands of people whether they're better off getting crammed down in the bankruptcy and getting this term sheet that's confidential

but no one can talk about until it's public. Whether that's what's best for them or whether they should litigate in the tort system.

She has zero power to do that. That renders her disqualified. That statement alone renders her disqualified to represent future victims in a case where the debtor has $61 billion. She wants to bind people apparently to a resolution where they get a third of 9 billion where the debtor says they've got 61 billion minimum.

This view that Ms. Ellis has of how the bankruptcy system is better is a view that Your Honor shares in your opinion of February 2022. And so I think in the declaration that she filed more recently, where I think it was maybe in the statements of the debtor, Ms. Ellis is taking the position that bankruptcy is better, right. And so the Third Circuit had that before it.

The Third Circuit had this issue of what system is better, the tort system or the bankruptcy system. It was before it. And the Circuit wrote at Page 108. Sorry. Okay. We take LTL at their word. Okay. This is, I'm sorry, Page 99. "The bankruptcy court" talking about, Your Honor, "ultimately saw the bankruptcy forum as having a superior ability compared to trial courts to protect the claimants' interest, viewing this as an unusual circumstance that precluded dismissal. At the same time, the bankruptcy court grappled with existing

Circuit case law. It's the bankruptcy court, the court believed, that presented a far more significant issue than equitable limitations on bankruptcy filings, which judicial system better served talc claimants, the state, federal court trial system, or a trust vehicle established under Chapter 11."

Answering the question, it provided a full defense of its strong conviction that "the bankruptcy court is the optimal venue for redressing the harms of both present and future talc claimants in this case." So that's the Circuit quoting your opinion and that's an opinion about what's better, the court system of the bankruptcy, that Ms. Ellis shares, okay.

The Third Circuit rejected Ms. Ellis's view of the world, okay. What the Third Circuit said on Page 111 was, "J&J's belief that this bankruptcy creates the best of all possible worlds for it and the talc claimants is not enough, no matter how sincerely held." The Third Circuit did not say that J&J was sincere. What the Third Circuit said was, even assuming they're sincere, it's not enough, "nor is the bankruptcy court's commendable effort to resolve a more than thorny problem. These cannot displace the rule that resort to Chapter 11 is appropriate only for entities facing financial distress. This safeguard ensures that claimants," my clients, "pre-bankruptcy remedies, state law remedies, full tort access, uncapped damages, punitive damages. Here, the chance to prove to a jury of their peers injuries, claimed to be caused by a

consumer product are disrupted only when necessary."

So the votes don't matter. The number of people allegedly supporting the plan don't matter. This Court respectfully does not have subject matter jurisdiction. It doesn't matter how many people approve a plan. It doesn't matter what Ms. Ellis thinks. Her view of the world was rejected.

And I'll end with this. This is a, well, a claimant can't do worse in a Chapter 11 than they can do in a settlement. So rather than accept a $9 billion settlement, the claimants would be better off electing to liquidate the debtor, liquidate the $30 billion. That's the better option, rather than have an FCR that's advocating for one-third of $9 billion. Let's just liquidate 30 billion. And, by the way, Ms. Ellis was the FCR who signed on to a second bankruptcy and all indications are she may or may not have been perfectly fine with them giving away $30 billion, which is what the debtor did.

This perversion of 524(g) by the debtor, they said in their reply, "Objecting parties may pursue dismissal, but this Chapter 11 case and the protection of the rights of future claimants cannot be put on hold." They're so eager to rush forward and bind people that aren't sick yet, because that's really what this is about, Judge. They want to bind people that aren't sick yet and they want to do it as soon as

possible, and the future claimants of all the people don't exist.

And so I would urge you to not appoint Ms. Ellis. But if you do, she can only represent claimants as to the debtor. She cannot represent claimants against J&J for J&J's independent non-derivative tort liability. That's Combustion Engineering. They said, Basic and Lummus, who probably had about 50 bucks between the two of them, weren't entitled to a channeling injunction because they didn't file for bankruptcy and they didn't have a separate FCR. So Ms. Ellis cannot represent future victims against both J&J and LTL.

Thank you for your time.

THE COURT: Thank you Mr. Thompson.

MR. MOLTON: I thank Mr. Thompson for that short presentation. But thank you, Clay.

In any event, Judge, I've got a very short PowerPoint I'm going to hand up to Your Honor and give to debtors' counsel.

THE COURT: Thank you. Kiya, how are you doing?

COURT REPORTER: I'm okay, Judge.

MR. MOLTON: Judge, hopefully, I'm going to be not as lengthy. Hopefully more akin to Mr. Satterley, but we'll see. There's been a lot said.

I view this as, again, I've mentioned it a number of times. David Molton, proposed counsel for the TCC, the Talc

Claimant's Committee, of Brown Rudnick. And we're pleased to be here as usual, Judge, presenting in front of you on something that's very important. I love seeing my picture on the screen and I know Mr. Gordon loves putting out that yes, we did, in accordance with Your Honor's note on the text order, reach out to him to meet.

He told us that what he doesn't put on the screen, Judge, is his response that it would be a waste of time. And why would it have been a waste of time? Because they were, at that point, colluding behind the scenes. While they were telling the Third Circuit that they needed to go file a cert petition and they needed a stay, they were preparing a second bankruptcy and preparing to incinerate the 2001 funding agreement and replace it with something that I think Your Honor remarked in your PI order decision may be -- and I think I got attacked for it. Indeed, they used the word libel, defamation. The largest fraudulent transfer in the history of the United States. That's something we'll get to eventually. But I'm going to really want to put a point on that.

Number two, we've heard, and I know others have talked about it, but I want to reiterate something. The mantra that has been beaten without evidence, without a record, said here by Mr. Gordon earlier today that the objectors represent a minority of the claimants, "minority of the claimants." How do we know that? We don't, Your Honor. There's no record for it.

Who are they?

I know we've had ad hoc committees of law firms, not of claimants, of law firms and we haven't seen a 2019. We haven't seen the retainer agreements. We haven't seen all of that. We'll get to that at some point if this case proceeds, maybe sooner rather than later. But that's just a misrepresentation. That's just advocacy, Your Honor, without a record.

Number two, that these folks who are objecting are motivated by self-interest. What do they mean? Well, they've referred to it, I think they've talked about common benefit funds. I'm at this business long enough to know that's a straw man. Common benefit funds aren't mutually exclusive. They're often dealt with in a bankruptcy as they are outside of bankruptcy. I've lived since 2003 with bankruptcies and plans that deal with common benefit funds. Indeed, the opioid benefit bankruptcies dealt with those as well.

But turn, talk about motivated by self-interest. What the proponents of this fast track cram down second bad faith bankruptcy don't say is that the law firms who purport to represent the claimants that have not yet been disclosed or not yet have agreed to anything stand to make 33 to 40 percent, 33 to 40 percent in attorney's fees. And as Your Honor remarked, where did these claims come from? Where are they? Who are they?

We've seen claim proliferation in other bankruptcies, Judge, and we do know and it has been put on the record here before, and I think has been talked about during the depositions, that many of these claims may not have diagnoses, may not have medical records, may be empty files referred to gynecological or cervical cancer, cancers which are not tied by Daubert to causation with respect to Johnson and Johnson's talc. And, accordingly, I think it's fair to say that many of these claims would not, could not be brought in the tort system and would not be brought in the tort system by the law firms that are offering them recently as claims in a bankruptcy.

I'm going to talk about financial interest. Financial interest is dismissal of the first bankruptcy, as well as dismissal of this bankruptcy, Your Honor, may be fatal to those law firms. I'm going to say it again. Dismissal of the prior bankruptcy. There was a 30-day window, as Your Honor knows, to file claims in the tort system, that was stopped by Your Honor's TRO and then, PI order. But dismissal of this bankruptcy may be fatal to those law firms' investments.

So whenever you hear the mantra, realize the other side. Also, we heard from Mr. Gordon this morning, and I'm sorry, I just have to respond to this before I get to my legal presentation. I'm going to quote him because I wrote it as he said it, "that this purported plan support agreement and term sheet are supported by a large majority of claimants in this

case." "Supported by a large majority of claimants in this case." We know that's not true.

Indeed, when they're forced to admit it, they say, well, we have law firms who have agreed to recommend to their clients this settlement. That may be accurate, but what we heard today, which is an attempt to get out on the wires, get out in the press, is absolute balder gash. We have not yet one, as I think some of my friends have said, not one piece of evidence to show what Mr. Gordon said this morning.

I'm pleased, Your Honor, to represent the Tort Claimant's Committee on behalf of all talc victims. We did so I thought ably, professionally, without vitriol in LTL 1, and we're going to do so here. But when we smell rot, as I said my first day. Remember, my first day here, something smells funny in Denmark. We're going to call it. We're going to call it, put it up here, offer it to Your Honor, and tell Your Honor what we think we see, why we see it, and what we urge you to do about it to protect, again, the integrity of the system that you love, Your Honor, this bankruptcy court and this bankruptcy system.

So that's my introduction. I didn't expect to give it, but I was kind of compelled to.

Can you go to Page 1?

The Third Circuit has set forth, as Your Honor knows, the duties and eligibility criteria for the FCR. You've heard,

Your Honor, Duro Dyne, and the facts of Duro Dyne, you asked about. I'm not going to deal with that. Mr. Thompson dealt with that. But the standard that Your Honor, at that point, applied in Duro Dyne, and did so pursuant to case law that existed is no longer.

THE COURT: Upheld on appeal by the district court. But just go ahead.

MR. MOLTON: Okay.

(Laughter)

MR. MOLTON: This is no longer the standard here. Your Honor knows that. Your Honor knows that. So I'm not going to argue Duro Dyne, but I'm going to talk about Imerys. The FCR serves as a fiduciary to the future claimants.

Next, please.

We looked at 524(g). This FCR, Ms. Ellis, must be more than merely disinterested. She must be independent and instead must be able to fulfill the heightened duties owed by fiduciaries. That's the law of our land here deep in New Jersey.

Next page, please.

The Third Circuit requires independence and undivided loyalty. Your Honor, an FCR is not a guardian ad litem. And Footnote 9 of Imerys makes clear, guardian ad litems [sic] can bind their charges who are usually incompetent for some reason. Here they don't bind and the Third Circuit made clear. But

they must be able to act in accordance with the duty of independence from the debtor and other parties in interest, a duty of undivided loyalty to the future claimants, and an ability to advocate for the best interest of future claimants, not follow along what the debtor wants, not receive declarations written by J&J's counsel.

One of the things I will add, and I'm not going to deal with the facts, but all the email chain we saw that was produced last night, late, last night, late, what's conspicuously absent from it? Mr. Gordon, Mr. Prieto, Mr. Falanga only came in later. We don't even see FCR's counsel until later on. We see one-on-one between Mr. Murdica and Ms. Ellis and Mr. Murdica's colleague.

Again, Imerys, I think I went through the guardian ad litem, but we adopt merely a standard akin to those employed to guardian ad litems [sic] in other contexts. What is the standard of a guardian ad litem in other contexts in New Jersey?

Can we go to the next blurb?

New Jersey courts have an exacting standard, Your Honor. Guardian ad litem must come to a role as a true independent without a preconceived strategy or opinion. Now, when Ms. Ellis was negotiating with Mr. Murdica, she was not yet the FCR in Number 2, but she was in Number 1, and that presents other problems that I think that Mr. Maimon went into

and Mr. Satterley went into. She wasn't a outsider for the purpose of the next petition.

"Guardian ad litems [sic]," Matter of Jobes, New Jersey Superior Court (1986), we put the blurb there, "who come to this formidable task with a commitment to achieve a particular result are not fulfilling the solemn fiduciary duty of protecting their charges." Guardian ad litems [sic] are more akin to independent investigators who must objectively evaluate the best interests of their constituents. They act as the eyes -- Next, please. -- the eyes of the court to further the best interests of the alleged incompetent."

"Why a guardian ad litem is an independent fact finder," and I'm citing Bacon v. Mandell, "and an investigator for the court who objectively evaluates the best interests of the alleged incompetent." What really is the default?

Next page.

The appearance of impropriety. The same standard that applies in other contexts. A guardian ad litem will not be independent if there is an appearance of impropriety. Citibank Farmers Co. v. COPs. "It's the guardian ad litem's duty to attack and question everything he honestly believes requires explanation." I don't know if we saw any of that with respect to even the declaration written by Mr. Murdica that Ms. Ellis reviewed and eventually did not sign. I'll get to that in a minute. But we didn't see any of that.

What do you mean by this? What do you mean by that? What do you mean? We saw none of that. And, again -- Next slide, please. -- Molinar v. Molinar. The foregoing circumstances in that case, I won't get into, an irregularity which could cause a reasonable person to perceive an appearance of impropriety.

Last, Matter of Muricswell (phonetic). We must be scrupulously careful that we avoid the appearance of any impropriety. That's New Jersey law regarding guardian ad litems [sic].

Accordingly, Your Honor -- First bullet, please. -- the FCR in this case can only be appointed under the heightened standard akin to a guardian ad litem and must, number two, you've seen facts in the other presentations. At a minimum, at a minimum, there is an appearance, an appearance, of impropriety.

Just give me a second, Your Honor.

Debtors' submissions to this Court, which Mr. Maimon went through and Mr. Satterley went through, shows that at least provides an appearance of impropriety and shows a lack of independence, a preconceived disposition. Your Honor, the proposed declaration, draft declaration that Ms. Ellis was given, for one, I mentioned, where was the investigation? Where were the questions?

"Due to long latency periods," Paragraph 6, "for

mesothelioma and ovarian cancer, renewed litigation of talc claims in the tort system would pose a serious risk that debtor later would be unable to pay future claimants at the same level as current claimants." What? With a $61 billion funding agreement that had not yet been set afire to? That was written by Mr. Murdica, by Johnson and Johnson, and wasn't questioned by Ms. Ellis.

Debtors' submissions to this Court show, Your Honor, and their representations that Ms. Ellis was supportive of a second bankruptcy filing, while the FCR was already in the dismissed case. That was a commitment we argue, and I'll get to that, that impacted her former and punitive future constituencies. The Matter of Jobes, again. If you're coming into a new position, you have to come into that new position without a preconceived notion and a preconceived map and a preconceived outline of where you're going?

There was a requirement to mediate under the mediation order, or there was a mediation order, but in no way did that mediation order call for somebody whose constituency was about to gain back their jury trial rights when their illnesses became manifest against a solvent debtor, a solvent non-debtor. But for the benefit of J&J and LTL and an LTL 2 bankruptcy and with $30 billion of less assets, again, I mentioned earlier, the court in the PI ruling said, as I said, this might be the largest fraudulent transfer in the history of

the United States.

Go to the next page. Bring it back to present matters.

At a minimum, Your Honor, and I'll get there as well, Ms. Ellis has agreed to support the filing of the bankruptcy case. The documents that Mr. Maimon went through from late March clearly show that notwithstanding that she did not sign that declaration. J&J's intention in LTL 2, as it was in LTL 1, is to channel future independent non-derivative claims against non-debtor J&J into a trust. This, too, is beyond the scope of what this circuit finds permissible.

I'm going to read to you from Combustion Engineering, Your Honor, when that happened. "The interests of the future Basic and Lummus asbestos claimants are not necessarily aligned with those of future Combustion Engineering asbestos claimants. The future asbestos claimants of non-debtors," I'm reading from the Third Circuit, "might prefer to have recourse against solvent entities rather than being limited to a proceeding against the asbestos PI trust, a limited fund subject to depletion, by current and future debtor, Combustion Engineering, claimants."

In any event, none of this seems to be taken into consideration during these negotiations.

Next page.

I'm citing Combustion Engineering again. I'm not

going to read it again, Your Honor. But what didn't we see? The desire of future claimants might against non-debtors and debtors, taking the benefit of the Third Circuit's dismissal of this case, want to go into the tort system and file their claims and prosecute their claims against solvent non-debtors and a debtor that had the benefit of a $61 billion funding agreement.

Next slide.

FCR must be independent and willing to approach anew in order to satisfy the Third Circuit under these circumstances. Reading from the Third Circuit's case here from January, "But given the Chapter 11's ability to redefine fundamental rights of third parties, only those facing financial distress can call in bankruptcy tools to do so." Applied here while LTL substantial future talc liability, its funding backstop plainly mitigates against any financial distress foreseen on its petition date."

Again, it stands in marked contrast to what was in the proposed declaration as we see it, but there was no discussion or negotiation or questioning or examination of those provisions. Again, LTL Management, from January, we take J&J and LTL at their word. LTL is a funding backstop, not unlike an atm designed as a contract, which, again, they put afire to because J&J remains its ultimate safeguard. Juxtapose that with what we see in the proposed declaration.

Lastly, I know Mr. Thompson talked about it, the public policy or the arguments as to bankruptcy or non-bankruptcy, the Circuit says, "These cannot display the rule that resort to Chapter 11 is appropriate only for entities facing financial distress. This safeguard ensures that claimant's pre-bankruptcy remedies here, the chance to prove to a jury of their peers injuries claimed to be caused by a consumer product are disrupted only when necessary."

Again, everything on this page are issues that an FCR when asked about participating in a second bankruptcy after the first one was dismissed, you would expect to show independence to, awareness of, and deal with. At a minimum, Judge, we believe that everything you've heard today raises serious concerns about independence and neutrality. Simply put, this record that you've seen today does not dispense with, but actually raises issues of about an appearance of impropriety.

One of the things that I think is important was recited by others is this declaration was not drafted by Mr. Falanga and his office, was not drafted by Ms. Ellis. It was drafted by Mr. Murdica's office, given to her. That's a serious issue we believe under these circumstance. Mr. Maimon pointed out issues and conflicts regarding other issues and substantial provisions, but I want to get to something that I think in and of itself ends the matter here.

Paragraph 7 of Ms. Ellis's declaration to you, Your

Honor, to this Court, Friday, and I'm going to quote, "At no time did I commit or express to either support or reject any proposals that were presented to me by the court appointed expert mediators and debtor, or the TCC." I think one of the prior presenters mentioned that this was very carefully wordsmithed. J&J doesn't appear in here. It doesn't appear in here. And that's who she was dealing with.

But I think it's fair to say, Judge, if you look at the email correspondence that Mr. Maimon showed, especially the one of the declaration where the response was, not, I object to this, tell me what this means, let me talk to you about this issue, let me discuss the second bankruptcy and how it affects my potential future constituents and my present constituents who at this point are getting ready to return or will have an opportunity when their injury, god forbid, manifests to return to the tort system. None of that.

All we have, Judge, is a paragraph, "I served as the FCR." "Served." Not, "I am serving." And the response from Ms. Ellis quote, "I am still serving, so hard to sign 'as is.'"

Thoughts. To me, Judge, one of the things I learned when I was a prosecutor is that my former boss used to tell me that the presumption of innocence is a rule of evidence, not a rule of common sense. And when juries go decide factual questions, they're asked to apply common sense as well. And here, we're doing it, too. Common sense as to what happened,

including this statement that challenges only the "served" as opposed to "I am serving" along with a verified complaint talking about Ms. Ellis's approval of a second bankruptcy, along with the board representations made by Mr. Prieto, talking about Ms. Ellis's agreement, or her inclination to approve a second bankruptcy.

Judge, I think that at a minimum, creates irreconcilable conflict between this declaration submitted to you and Paragraph 7 and the record you have in front of it. I'm not here to judge. I'm not here to decide. I'm not here to say anything other than what we have here is an appearance, an appearance of impropriety.

Again, Your Honor, to protect this institution, to protect this case, however long it exists, and to protect these proceedings, we believe, Your Honor, that this is a ill-made motion, not based on a year ago, which was a very different circumstance. And I celebrated Ms. Ellis's appointment as FCR, as the first woman FCR, as Your Honor well knows. But we've got a different record and we have different circumstances and we have different documents and different evidence, and we have to deal with what's in front of us now. And this motion cannot and should not be granted, Your Honor.

What Your Honor should do, which I applauded you for last year, if Your Honor remembers, from this very rostrum, is do a process that will allow proper vetting and limited

discovery of various candidates. And should this case proceed, and I know Mr. Satterley talked about there's a motion to dismiss pending, Judge, there's seven. I'm raising my hand. Seven.

And Your Honor, we'll see some pleadings from the TCC soon. We're going to be asking Your Honor to stand down on plan and other case issues with some carve outs pending a motion to dismiss. It should be no surprise that that's what we're going to be asking Your Honor to do. Probably this week you'll see that.

But in any event, should this case go forward and Your Honor require an FCR, we believe very strongly for the benefit of all the talc victims that there be a due process, a fair process, Your Honor has the template for it, let's get on with that if that's what Your Honor wants to do.

Thank you.

THE COURT: Thank you, Mr. Molton.

I do see, before I turn to you as Trustee, Mr. Ruckdeschel, do you wish to be heard, remotely?

MR. RUCKDESCHEL: John Ruckdeschel on behalf of Paul Crouch. Can you hear me okay?

THE COURT: Yes, I can.

MR. RUCKDESCHEL: All right. Thank you, Your Honor. And I appreciate the courtesy of being allowed to appear by Zoom. Once again, thank you very much.

I'll be very quick. I know most people have said that and weren't, but I will. I want to start Slide 22 of Mr. Gordon's presentation referenced something that I put in Mr. Crouch's pleading about the limitations on the role of an FCR absent demonstration of an actual limited fund. And the accusation, I believe on the slide was that this position was contradictory to the contention that the future's claims representative, whoever it may be, must be independent. And that's simply not true.

The duty of the futures claims representative is circumscribed by the rulings of the Third Circuit in Combustion Engineering and in LTL that the tort law rights of claimants can only be disrupted when necessary. And they have defined "when necessary," and that's when there's an actual limited fund and actual financial distress. That hasn't been demonstrated with respect to LTL, and it cannot be demonstrated with respect to non-debtor J&J or any of the retailers. No attempt has been made.

So the position that an FCR, if appointed now, would have to be appointed for the limited role of protecting tort law rights of the future's claimants is not at all in conflict with the independence of the FCR. It's requiring the FCR to abide by the Third Circuit.

And that takes me to my next point, which is, there's no dispute. There is no dispute in this case that there were

discussions between counsel for Johnson and Johnson and Ms. Ellis during the pendency of LTL 1 after the dismissal when Ms. Ellis voiced her support for the filing of a second bankruptcy. There's no dispute that that happened. There's no dispute that she agreed. It was presented to the board. It's in the complaints. It's in the emails. The only caveat to the draft agreement that Ms. Ellis ever expressed, as Mr. Molton just pointed out, was that they had written her status as FCR in the past tense when she was still serving.

She never said, but I don't agree with the other stuff in it. And that's what was presented to the board. That's what's been presented to this Court. The FCR of LTL 1 supports the filing of LTL 2. There are only two possibilities. Either, either Ms. Ellis was not aware of the scheme that was being concocted to cancel the first financing agreement, replace it with the limited and conditional financing agreement, and come back in. If she's not aware of that happening, Judge, then her support of LTL 2, right, is in direct violation of the Third Circuit's ruling in LTL 1 that you can't get there from here.

So that's one possibility. She didn't know, which is sort of the implication in her declaration, though it's not exactly clear. Or, she knew they were going to cancel the first funding agreement and replace it with the new limited conditional funding agreement, but with (indiscernible) as the

pending FCR, she had an obligation to tell the United States Trustee and to tell Your Honor, and she didn't.

Either way, there is a gross appearance of impropriety here. Either she supported the refiling of LTL 2 in direct violation of the specific ruling of the Third Circuit that all of the concerns about the inefficiencies of the tort system weren't enough, or she knew they were going to cancel the funding agreement and she didn't say anything.

I don't know. We can't tell from these very carefully scripted declarations how things play out there. But there is certainly an appearance of impropriety. And I'll end with the last thought that I have here, Judge, which is there was a comment towards the end of Mr. Gordon's presentation about there's this urgency, and we've got this deadline in the plan support agreements to get a plan submitted by May 14th or whenever that date is, right.

Well, when you kill your parents, you can't complain that you're an orphan. When you light your house on fire, you can't complain that the fire department's not getting there fast enough. And that's what they did. They tore up the first funding agreement. They replaced it with the new scheme to manufacture financial distress. They agreed to a deadline that's binding in the PSAs, and I'll come back to that in just one second. And now they say, but you've got to fast, Judge.

Well, that's on them. They set their house on fire,

and that's on them. You are not under any obligation to abide by the deadlines that LTL has manufactured and put before the Court.

And that leaves me with my final point, which is something Mr. Maimon touched on, and I just want to give you a little bit of the law, right. New Jersey follows the objective law of contract like all states, right. And you can look at Cohn vs. Fisher, 118 N.J. Super. 286; Collins vs. Mary Kay, 874 F.3d 176; Leitner v. Braen, 51 N.J. Super. 31; or Looman Realty vs. Broad Street Bank, 74 N.J. Super. 71.

The Court, Your Honor, is required to interpret the contract documents before you under the objective law of contract. What does it say? Not what does it say, and then, we're going to tell you it doesn't really mean that. And the debtor constantly is asking the Court to do just that, right. So funding agreement one says unconditionally inside and outside of bankruptcy, it applies. Now, oh, we had the secret caveat that the purpose would be frustrated and so you really should let us out even though it says what it says, and you're required under North Carolina law to interpret it that way.

Well, now we have the same with the PSAs. On the one hand, the debtor wants Your Honor to believe the PSAs, this is binding support. We definitely have unequivocal commitments of all of these lawyers and all of their tens of thousands of clients to support this new scheme, right.

On the other hand, because there are significant ethical obligations to that that would make it ethically improper, Mr. Kim then testifies, oh, well, we're not going to enforce it if anybody backs out. And they want the Court to understand that the funding limitation of 8.9 is a hard condition. But that the appointment of the claims administrator, Ms. Ellis, was just a placeholder.

Well, that's not how the law of contract works. And they want it to be binding on the one hand, and they want it to be not binding in just sort of an idea on the other. Well, that's not how it works. It's governed by New Jersey law on its face. There's a selection clause. It has an integration agreement. And Cohen vs. Fisher said it perfectly. They said, "Under the objective theory of mutual ascent followed in all jurisdictions, a contracting party is bound by the apparent intention he outwardly manifests to the other contracting party. To the extent that his real secret intention differs therefrom, it is entirely immaterial."

So you can't have it both ways. Either the PSAs are garbage. They mean nothing and they're not enforceable and they're just this place mat that we're wiping up spilled coffee with. Or, they mean what they say and they're binding, right. Now, if they're binding, then the appearance of impropriety here is overwhelming, right. And Your Honor has to go with what the contract says. The contract says it's governed by New

Jersey law. It's got a complete agreement in it and all of the terms in the term sheet have to be followed. And the term sheet says what it says. And now, what you are getting is this selective picking and choosing of clauses, this flip flopping on whether it's binding, whether it's not, whether it means something, whether it doesn't, and these are the biggest corporations in the world, Judge, with the biggest --

THE COURT: All right. Thank you, Mr. Ruckdeschel.

MR. RUCKDESCHEL: -- law firms representing them. This is improper. There's no hurry. The motion should be denied.

THE COURT: Thank you, Counsel.

The office of the U.S. Trustee.

All right. We're going to take -- I'm sorry, Mr. Sponder. We're going to take a five minute break.

Thank you.

(Recess at 12:05 p.m./Reconvene at 12:12 p.m.)

THE COURT: All right.

Actually, Mr. Sponder, before you begin, let's just outline what the rest of our day is going to look like. It seems like I always have to do this with you all.

I assume after Mr. Sponder speaks, Mr. Gordon, assuming, we'll call it this side, is done with their presentations, Mr. Gordon, you're going to respond.

MR. GORDON: I am, Your Honor.

THE COURT: The question becomes, and then after the motion relative to Ms. Ellis is completed, the arguments, we have other matters on the agenda. Unless you tell me we can resolve those, and I probably won't believe you, in 45 minutes or an hour, I think we would break for a half hour lunch. Make sense?

MR. GORDON: That makes sense to us, Your Honor.

UNIDENTIFIED SPEAKER: With us as well, Your Honor.

THE COURT: So you're telling me it's not going to be 45 minutes or an hour.

MR. SATTERLEY: If they agree to my Valadez motion, that will solve everything.

THE COURT: Sit down.

(Laughter)

THE COURT: All right.

MR. SATTERLEY: Trying to have a early lunch.

THE COURT: Mr. Sponder.

MR. SPONDER: Thank you, Your Honor. Good afternoon. Jeff Sponder, together with Lauren Bielskie and Linda Richenderfer, on behalf of the United States Trustee.

Your Honor, at the outset, debtors' counsel made a few statements that need to be clarified. First, debtors' counsel advised that all parties, including all in the courtroom, approved Ms. Ellis as the FCR. I'm not sure who parties is referenced, but the United States Trustee did not

take part in that. We remain neutral and didn't take a position.

Second, Your Honor, debtors' counsel stated that in LTL 1, no one disputed the standards for appointment of the FCR and Mr. Gordon read the standards from Imerys. But the Imerys standard was not in effect at the time Ms. Ellis was appointed. The disinterested standard, of course, was in effect at that time.

Your Honor, just as the Court determined it would not automatically reappoint the same mediators from the first case and asked for new recommendations, so too, should the Court take a fresh look at candidates for FCR. As such, the U.S. Trustee does not object to the debtors' general request for the appointment of an FCR.

As Your Honor is aware, the standard for appointment of an FCR was recently articulated by the Third Circuit in the Imerys case, which has been described several times already so I won't go into that. I will quote, though, a few spots from Imerys where the Third Circuit said, and I quote, that "variations in the appointment process are otherwise within the discretion of the bankruptcy court."

The Third Circuit also offered this instruction and I quote, "Implicit in the FCR appointment standard is one procedural requirement, that whatever process the bankruptcy court follows ensures that the court has the information

necessary to assess the candidate's qualifications." This fiduciary standard, which as you heard and know, is akin to the guardian ad litem standard, was not the standard when Ms. Ellis was appointed. It is the standard now.

Here, Your Honor, similar to the first bankruptcy case, the debtor presents its chosen candidate and asks this Court to appoint its chosen candidate, Ms. Ellis. However, Your Honor, in the first case, the debtor withdrew its motion to appoint its chosen candidate as FCR at Your Honor's direction. In the first case, Your Honor entered a case management order and expressed concerns regarding anticipated costs, delays, and resources associated with litigation over the nomination and appointment of an FCR, which led to Your Honor instituting a process to select the FCR.

That process included the submission of candidates by the parties and the Court, allowed the striking of candidates, and allowed limited discovery, which would conclude no later than 14 days following the conclusion of the hearing on the motions to dismiss filed in the first bankruptcy case. As such, Your Honor, the FCR was not selected in the first case until after the motions to dismiss were heard and Your Honor rendered your decision. The Court should again institute a process similar to the first case in order to produce a candidate for FCR.

Your Honor, aside from the procedure to appoint an

FCR, the motion should be denied as there exist unanswered questions about Ms. Ellis's independence and loyalty to future claimants, which Your Honor has already heard over and over from this side so I will not go into it much. One of the issues here is Ms. Ellis's involvement in the plan to file the second case while still in bankruptcy during the first case.

Also, Your Honor, and one thing I think that should be noted is that, if Your Honor peruses the motion for the FCR and the original Ellis declaration, there's no mention of any information about any conversations, negotiations, discussions at all with Ms. Ellis. That was left out and only found out during the depositions for the preliminary injunction.

Your Honor, as the process to appoint an FCR must ensure that the court has the information necessary to assess the candidate's qualifications, at the very least, more information is required to determine whether Ms. Ellis meets the fiduciary standards set by the Third Circuit. With that said, Your Honor, the U.S. Trustee believes that a similar process used in the first bankruptcy case should be enlisted again. If the same process is used in this case, and to the extent Ms. Ellis is selected as a candidate by one of the parties or Your Honor, and survives being stricken, discovery should be allowed concerning whether she would meet the Third Circuit standard.

Your Honor, I also want to note that during debtors'

counsel's presentation today, the United States Trustee's objection as to process seems to have been ignored as process was not discussed at all or a reason to not have that process.

So with that, Your Honor, that is the United States Trustee's position, and I thank Your Honor for the time.

THE COURT: Thank you, Mr. Sponder. I do take your argument to mean that the U.S. Trustee is not seeking additional discovery as part of this motion.

MR. SPONDER: Correct, Your Honor. The United States Trustee's position is that there should be a process for the appointment of the FCR, that the debtor should not choose the FCR, and similar to what we did in the first case. If Ms. Ellis is chosen as one of the candidates, if Your Honor was to do that process, then at that time, there could be some discovery, if necessary.

THE COURT: All right. Thank you.

MR. SPONDER: Thank you, Your Honor.

THE COURT: Mr. Gordon.

Oh, I'm sorry. Mr. Falanga

MS. WALSH: Mr. Falanga is missing the party. He is in --

THE COURT: Oh, I'm sorry.

MS. WALSH: -- Ms. Walsh, my name is Liza Walsh. I'd like to say a few words on behalf of Randy Ellis with the --

THE COURT: Yes.

MS. WALSH: -- Court's permission. Granted, it's not our motion, but I do want to make a couple of statements.

First. Mr. Falanga apologizes. He's in Utah in depositions and I'm sure he's --

THE COURT: He shouldn't apologize for that.

MS. WALSH: -- very disappointed. I'm sure he's disappointed he's missing all of the fun today.

First of all, we want to thank you for the opportunity allowing us to say a few words on behalf of Ms. Ellis, who, undoubtedly after all of the presentation this morning, she's without a doubt feeling all of the love in the room. So thank you all for your comments.

I have had a front row seat since her appointment to Ms. Ellis and she is -- you know, I'm not a young lawyer any more and I've seen a lot, but what I can tell you, Ms. Ellis is honorable, she's ethical, an independent woman, and I'm going to stress that, an independent woman. I'm sorry, is it --

MR. MAIMON: I rise to object, with all due respect, Your Honor. But counsel vouching for somebody is not only improper, but it's prejudicial to our rights.

THE COURT: It's argument. Overruled.

MR. MAIMON: But she has no standing to argue, Your Honor.

THE COURT: That's fine. Overruled.

Continue, please.

MS. WALSH: Since the inception of her appointment, both sides have worked very, very hard to convince Ms. Ellis that their position, no matter what the issue was, their position was the right one. And, frankly, I could tell you that most of the times it appeared as if it was the dueling in the wild, wild west. Or what do they call it? A wild, wild west dueling for her support and for her affection.

But no matter how difficult it was, Ms. Ellis, at all times, stood her ground because the only constituents and the only loyalty she ever thought about was the future claims representatives because at all times she recognized that she was a creature of this Court's appointment and that is the only loyalty she had to this Court and to the future claimants.

What you're hearing today and what you've heard in some of the papers that have been submitted to you in the last several months and also some of the objections to the fee applications is nothing more than a disappointment in Ms. Ellis's independence, plain and simple. Because if Ms. Ellis had agreed with one side or the other, you would not see and not hear those complaints. And I wish this wouldn't start blanking out on me.

We're not here to advocate for her appointment because, obviously, it's not our motion. However, we do believe that her record up to this point, her declaration, the detailed declaration we've submitted, speak for themselves and

would warrant such an appointment. She worked very, very hard to get herself up to speed under very, very difficult conditions where there wasn't as much cooperation as one would hope to get an FCR up to speed and enable them to get the experts that she needed in order to get up to speed to participate in the mediation, the estimation, and all of the other proceedings in this Court. But she did it anyway.

What I would like to express on her behalf is that her disappointment, her absolute disappointment in the reckless and malicious attacks, character attacks, simply because of her independence, whether she gets appointed or somebody else does, or another FCR in another proceeding around the country, those attacks should not be used -- or those tactics should not be used to control an FCR because, as the Third Circuit said, they have to be independent.

Intimidation through subpoenas, news articles, baseless public filings, and overall bullying, absolute bullying tactics should have no place in these types of proceedings -- or anywhere else, but certainly not in an equitable court.

After Ms. Ellis submitted her affidavit to Your Honor, certain plaintiffs served discovery requests on three days' notice. We worked diligently over the weekend -- we affirmed accepted service, we worked diligently over the weekend to respond as quickly as possible. Three days' notice.

We spent the weekend searching for documents to respond and submitted -- and responded last night.

So the accusations that somehow we did not provide what they needed is not accurate.

The other point we'd like to make is, no matter how many PowerPoints, how many arguments, how many people stand up here to make those arguments, one thing is not -- two things are not going to change, they're never going to change because they're undisputed: Ms. Ellis never asked or agreed to be a claims administrator. Plain and simple, that is the end of the story. What the debtor may have wanted or may have wished or may have planned she certainly had no knowledge of, but it is undisputed that she never asked or agreed.

What's also undisputed is that Ms. Ellis did not sign the declaration that was given to her, whether you want to say it was given to her by the debtor or it was given to her by Johnson & Johnson or it was given to her by whoever you -- a representative of Johnson & Johnson, it doesn't matter, Ms. Ellis did not sign that declaration supporting a second filing, plain and simple. And all the arguments that were made today were made based upon the assumption that in fact it was signed, but it is undisputed that that document was not signed.

Mr. Moulton made an argument regarding paragraph 7 of her declaration, the affidavit she submitted to Your Honor, which says "at no time did I commit or express to either

support or reject any proposals that were presented to me by the court-appointed expert, mediators, the debtor, or the TCC."

And it criticizes that we did not include Johnson & Johnson. Well, we will be submitting a supplemental declaration that will include Johnson & Johnson.

There was no intentional exclusion of Johnson & Johnson in that declaration.

The last point we would like to make, Your Honor, is that we can assure Your Honor and we can assure everybody in this room, and those who are participating by Zoom or on the telephone, Ms. Ellis will not be coerced to agree with any party, whether it be the TCC or the debtor or Johnson & Johnson or anybody else, to agree with the position without educating herself, consulting with the experts, consulting with her lawyers, plain and simple. That is what she has done from day one and that's what she's going to continue to do if she's fortunate enough or maybe crazy enough to want to do this again.

Lastly, again, I'm going to stress that this was a historical appointment and her character, her character, her reputation are at stake and, zealous advocacy is one thing, but the intentional attacks camouflaged as arguments should not be accepted.

Again, thank you for Your Honor and, most importantly, on behalf of Ms. Ellis, I would like to thank you

for the confidence you placed in her during the first bankruptcy proceeding.

THE COURT: Thank you, Ms. Walsh.

MR. SATTERLEY: Your Honor, can I make one point, just one minute, just one minute on that.

THE COURT: Very briefly.

MR. SATTERLEY: I was the one that served the subpoena. They couldn't have worked all weekend because I served it at 5:25 on Sunday evening. So the representation they worked all weekend to produce the 17 documents last night couldn't have been all weekend.

So I just want to correct the record. I have a copy of the subpoena. And I certainly don't bully anybody.

MS. WALSH: We did --

THE COURT: This is not going to be dispositive of my decision --

(Laughter)

MR. SATTERLEY: But I wanted to correct the record.

THE COURT: -- the time frame. I respect everybody is professionals here.

MS. WALSH: We did receive from Mr. Thompson an earlier communique or love note, as we'd like to call it. Thank you.

THE COURT: All right. Thank you.

Counsel?

MR. HANSEN: Good afternoon, Your Honor, Kris Hansen of Paul Hastings on behalf of the Ad Hoc Committee of Supporting Counsel. I wanted to just take a moment to introduce myself, Your Honor, as well as my co-counsel, and make a few remarks, if that would be okay with the Court?

THE COURT: Sure.

MR. HANSEN: Your Honor, I'm also accompanied by Mr. Seth Van Aalten of Cole Schotz, and Mr. Charles Rubio of Leonard -- Parkins & Rubio, our co-counsel to the Ad Hoc Committee of Supporting Counsel.

Your Honor, we represent approximately 20 law firms who have approximately 60,000 claimants that they represent. We're hard at work on the 2019 statement; we'll get that on file as soon as we can. Obviously, with that number of law firms and that number of claimants, it's a tall task and we are putting it together.

THE COURT: Sure.

MR. HANSEN: What we're trying to do, Your Honor, is put a consolidated 2019 together for yourself and for all the other parties in interest in the case. It will obviously come with a motion to redact as well, which is similar to all the other 2019s that have been filed in the case by all of the various law firms with respect to their claimants.

So I wanted to make sure the Court understood that and we'll get that on as soon as we can, Your Honor.

Your Honor, with respect to the questions before the Court at the moment, the Future Claims Representative, from the ad hoc committee's perspective, cutting through what I can really only describe as hyperbole and self-validating statements, there have been hours of those that have been going on -- all without fact -- Your Honor, cutting through all of that, what's really happening here is what's before the Court is a plan process and a motion to dismiss.

Obviously, there was a prior preliminary injunction motion, that will play itself out, you know. We have a motion to intervene in that adversary that's on file, we'll take that up at the appropriate time, but what's really going on here is a plan process and a motion to dismiss. If the TCC and the other firms who are against the plan believe that the votes will come in -- and I think we're all clear here, it's not a cramdown, this is a question of whether or not a voting threshold can be obtained -- if they don't believe that that voting threshold can be obtained, then I don't really understand, from the ad hoc committee's perspective, what the fear is in letting the plan move forward and if they believe that that plan will be voted down. And I don't really understand what their fear is with respect to this Future Claimants Representative either, who they supported in the prior case.

So, from the ad hoc committee's perspective, that's

what's really going on. They want to try to prevent the votes from coming in with respect to the plan because they're afraid of what the result is. And so, from the ad hoc committee's perspective, we urge the Court to go ahead and appoint the Future Claims Representative, who's already familiar with the case, who can expedite the process, and we can move to that question of the vote. And with respect to the motion to dismiss, you'll take that up as well, Your Honor.

And I have to say that I was a little bit taken aback by Mr. Molton's statement that the TCC absolutely respects the integrity of this Court and the integrity that is placed upon the process that plays out before this Court, after having threatened Your Honor and fined a mandamus motion shortly thereafter to try to take the cases away from Your Honor. If justice is to play out in this Court, it should play out in this Court with respect to both a plan process and the motion to dismiss.

So, again, Your Honor, we would urge you here to appoint the claims representative that is most familiar with the case, that can expedite the process in front of Your Honor, and we can get to what is really going on in this case, which is whether or not the case should be dismissed and whether or not the votes are here to support the plan.

Thank you, Your Honor.

THE COURT: Thank you, Counsel.

Mr. Gordon?

MR. GORDON: Your Honor, Greg Gordon again on behalf of the debtor. I'd like to make a few points, if I could.

Number one, sort of going in reverse order here, Mr. Molton said -- he acknowledged, of course, that he sent an email to me indicating that he had a proposal to make, and then he sort of brushed it aside saying, well, my response was it was a waste of time, and he attributed that to the fact that we were scheming to come up with the second bankruptcy. What he didn't tell you was that my email said why I indicated it was a waste of time. He said he had an ovarian cancer-only deal to discuss, but not including (indiscernible) at all. And I told him what we said from the beginning that we want a full resolution of all claims in the case, and I didn't hear anything further from Mr. Molton. So just to straighten that out for the record.

The second thing about Mr. Molton is he stands up here and he says there's absolutely no evidence at all of these contentions and a majority of the claimants support a plan, nothing, Your Honor. It's totally ridiculous. In fact, he used a word I haven't heard in a long time, balderdash, it's absolute balderdash. I had to look that up, I couldn't remember what was. No evidence.

But what's so telling about that, Your Honor, is that the evidence that exists or the support that exists for that is

what's always done in these cases. I mean, you heard evidence about this. It's firms standing up saying, I represent these claimants, I'm going to recommend to them this plan and I believe that they will support this plan. That's about as far as you can go. He knows that, and so for him to stand up here and to say that.

And the other thing, of course, he's omitting is he's saying we have absolutely no evidence of that. Well, yes, we do. We've submitted all these signed plan support agreements. We've provided to them the list of the claimants. Now, they don't like the list because they've been redacted to protect personal information, but we have it. He stands up here, Mr. Maimon stands up here and says this is all unreal, it's not true; we have thousands of claims, all these law firms. What do they have? They have nothing.

And so it's just striking to me that they are making -- they continue to make the same point, this is all made up, this majority doesn't exist, but we have evidence -- they might complain about the evidence -- they don't have anything.

And the other point, the related point here, is they always ignore the fact that this group of supporting firms includes the Onder firm, includes the Madgett firm, they were on the initial TCC. Mr. Molton was never standing up here saying, you know, these members of the TCC, we're not really sure they represent anybody. We don't really know because we

haven't -- we've been asking, you know, we haven't seen any medical diagnosis or some engagement letter or what else. So, for me, you should just take that for what it is.

And I think, Your Honor, bottom line, it's what Counsel for the Ad Hoc Committee just said, this is about they don't want the vote. So they can stand up here and say a hundred times this is not real, the majority doesn't exist, but the real test of that is the vote and they don't want you to have the vote. That is -- if there's anything that's clear from today, that is clear.

Mr. Satterley is a hundred percent wrong when he says this is about cramdown, it's exact opposite. We're trying to get to a consensual deal that has the support of 75 percent, they don't want that to happen. And I presume they don't want that to happen because they have a significant fear that we do have the vote.

The other thing, Your Honor, I feel like this thing has gone way off track in some respects. Your Honor, I thought, asked a good question, which is what if this were just a standard prepack case -- and we've had these -- and you had a committee appointed and a Future Claimants Representative in place in advance of the case, who then come into bankruptcy and say we've agreed to a plan. And you have some minority firms come in and say we don't like the plan, and they would say to Your Honor this FCR can't be appointed, and I assume they might

say, and this ad hoc committee can't be appointed either because they come in to you with a preordained view of what should happen in this case. That doesn't make any sense at all.

And the reason I raise it is, just think, if Ms. Ellis actually signed the declaration, or let's hypothesize she actually signed a PSA, because she determined in both cases that those were a fair and proper resolution of the case with respect to future. Is that disqualifying? Why would that be disqualifying if, in her capacity as FCR, she decided that that plan deserved to be supported or that the case deserved to be supported. They would suggest and they've said, basically, that would be disqualifying.

And, to me, all I can hear over and over again is it's disqualifying because they disagree with that. They don't think anybody in their right mind could ever agree to do a plan in bankruptcy that calls for a permanent resolution of the liability, and I suggest to Your Honor that cannot -- that cannot be the rule.

So we've really sort of gone way out there with this because that's not even this hypothetical. She didn't sign the declaration, that's undisputed; she didn't sign a PSA, that's undisputed. But I'm just saying to Your Honor I think, even if she did, that shouldn't be viewed as disqualifying that, in her capacity as FCR, doing the work you asked her to do, if she had

made a determination that that was the right thing to do for her constituents, then that's what she did. That's not a disqualification. That doesn't show a lack of independence, that shows someone who actually performed the job that she was called on to perform.

THE COURT: What about the committee or the objectors' position that her consideration or even just consideration of a new filing while she was still the FCR in case one would be a breach of -- especially given the overlapping and the selection of a date of who would qualify as a Future Claimant, their position is that she's breaching her obligations to those future claimants in case one by the actions she was taking in supporting going forward with the bankruptcy in case two?

MR. GORDON: Well, I have to be honest, Your Honor, I didn't really understand those arguments at all, and the reason I don't is I think the constituency is the same. So when Mr. Maimon puts up a bunch of slides showing little people moving around from one box to the other, I honestly didn't understand what he was talking about.

She represents the future claimants. These are people who have not manifested a disease, we don't know who they are, and the -- we had LTL I, LTL II, I don't -- I'm just being honest -- I don't understand the argument that somehow she represented one constituency there of future claimants and

now she has a different constituency.

Now, Mr. Maimon made a big to do out of that provision on the April 4th cutoff date and what I heard him saying were things like, well, they've just disenfranchised everybody after that date, they can't vote. That's not a voting provision. There's going to be a solicitation motion filed. And so I didn't really understand that argument either.

The other thing, generally, about Mr. Maimon which I just don't get is he stands up here in the first slide, he says, just the facts, and then he purports to ignore all the facts. And he just acts like Ms. Ellis signed the PSA, he acts like she agreed to have her name put into the terms sheet as the claims administrator. The unequivocal evidence, the undisputed evidence, is the opposite of that. He went on and on and on, how could anyone agree to the one third? How could she agree to this? How could she agree to that? And he did that knowing full well she didn't agree to anything.

And so that's all -- it's just fiction. You know, that's the problem with this, this is just trashing somebody, it's character assassination. It's coming up with accusations and then, when you're called on it and you're shown that your accusations are boundless, you double down and you make them again anyway, even though the record says -- the record says otherwise.

So I'll pause there for a second. I'm not sure I

answered your question, but I'm just being honest, I didn't really understand what the argument is.

THE COURT: All right, fair enough.

MR. GORDON: So, Mr. Thompson, I just have to respond to one thing that he said.

And Mr. Thompson, to me, just proved my point that he doesn't want Ms. Ellis appointed because she disagrees -- you know, she hasn't adopted his arguments about constitutional principles and limited funds and the like, but he keeps saying over and over and over again, everybody keeps saying it, is the funding agreement was a $61 billion commitment and that's been thrown away to 30 billion. And I tried to clarify this before, that is not true. That was a 60 -- that was a commitment to fund liability, the amount of the liability. The amount of the liability hasn't changed. And so to say that $30 billion has been lost, that's just, to me, a misrepresentation or a mischaracterization of the facts.

He made an argument that you need to have a separate FCR for J&J's independent liability based on combustion. The difference here, Your Honor, these are the same claims. As Your Honor knows, Old JJCI assumed the liability, all the liability back in 1979. So, to me, combustion doesn't apply and that wouldn't make sense to have a separate FCR for that.

And the other thing, you know, I would just go back to Mr. Maimon again. He made this impassioned plea that the

documents are what they are, they're solidified in stone. I think Mr. Ruckdeschel said the same thing, New Jersey law, you've got to apply the documents, they say what they say. And, to me, it just ignores the very top of the document that's attached to the plan support agreement, it's a term sheet; it's a term sheet subject to documentation, it's subject to further negotiation. We've said that from day one.

And so for someone to stand up here and say, whether or not Ms. Ellis says she's a claims representative or not, or whether she knew about it or not, the document, by God, says she's a claims representative and that's the end of it. That, to me, doesn't make sense.

And then two other things, Your Honor. The whole idea of delay, Mr. Molton is all about he wants delay. After months and months and months that delay is harmful to his clients, we've got to move quickly, now he wants a delay. And that's, to me, just to avoid the vote, if he can avoid it.

And then the last thing to say is, so the ultimate fallback is there's an appearance of impropriety. So think about that in this context. You have somebody who was vetted before, approved before. A series of baseless accusations are made, they're proven to be false, but nonetheless, because they were made and even though they're false, there's an appearance of impropriety and she should be rejected, and I don't think the Court should embrace a standard like that.

I don't think Ms. Ellis has done anything wrong, I don't think she deserves any of the criticisms she's received, and we would ask Your Honor to appoint her as the FCR.

THE COURT: All right. Thank you.

All right, argument is done.

MR. MAIMON: I told everyone, we shouldn't even ask to rebut.

THE COURT: Smart move.

UNIDENTIFIED SPEAKER: I have four points, he told me not to make them.

THE COURT: Discretion, right?

All right, let's -- I'm going to reserve. I am unlikely to make a decision today. We are convening on Tuesday, I'm hoping to have a decision by then. I think we have argument on the certification issues on Tuesday.

We have lots more to discuss today, we'll do that after lunch. Come back, we'll start no later than 1:30. Try to come back by 1:20.

Thank you.

COUNSEL: Thank you, Your Honor.

(Recess at 12:47 p.m./Reconvened at 1:32)

THE COURT: Okay, we are back on record. And so we finished the first item on the agenda.

(Laughter)

THE COURT: Let's go on. Let's see, Valadez.

MR. SATTERLEY: May it please the Court, Your Honor?

THE COURT: Yes.

MR. SATTERLEY: Joe Satterley of Kazan McClain Satterley & Greenwood for Mr. Valadez. Let me just get this presentation rolling.

May I approach, Your Honor?

THE COURT: Absolutely.

MR. SATTERLEY: A very short presentation.

THE COURT: You know I don't believe any of you.

(Laughter)

MR. SATTERLEY: It's only 15 pages. I told Ms. Theriot it was 12, but I added a couple. So I appreciate Your Honor allowing me to give Your Honor a status update.

As Your Honor knows, I've been before Your Honor on this case many times and when you lifted the stay back in February, and then they filed and you lifted the stay again on the 20th, I've been working very, very hard to get the case prepared for trial and it is ready for trial.

And this photograph right here is Mr. Valadez last, I think Friday, and the photo on the left is him receiving immunotherapy. His treating doctor is giving it to him. And then that's him on the way home. He's deteriorated quite a bit since I first started asking for Your Honor to grant him relief last May and he's deteriorated quite a bit just since Your Honor granted full relief on Valentine's Day, February 14th.

I showed Your Honor this slide many times. These witnesses have all been deposed. As a matter of fact, every one of them, with the exception of Dr. Felsher, their deposition is complete, totally complete.

Yesterday, Dr. Backhus finished her fourth day of deposition, her fourth day, and her deposition was completed in about an hour.

Dr. Abraham, the pathologist in the lower left, gray-haired fellow, his deposition was completed yesterday as well.

Dr. Ronald Dodson, who did the tissue digestion analysis and found the talc and the mica and the other ingredients from J&J in Mr. Valadez's body, his deposition was completed in about three hours.

Dr. David Egilman, he's with the glasses on the top, he was deposed twice in this case, his deposition was completed.

Dr. Roy, the treat oncologist, her deposition was completed in four hours.

Dr. Felsher, who is the only remaining expert -- or, actually, the only remaining witness to be -- his deposition to be finished, I offered him to be deposed again on the 8th. And lead counsel for J&J, Mike Brown, told me he wasn't available on the 8th, so I offered the 9th. And he's accepted it and he said he will finish -- Mr. Brown said he will finish the deposition on the 9th in less than three hours, and we've set

aside that time for that to occur.

I submitted yesterday a supplemental submission and I included in here sort of a review of all the depositions that have occurred and when they occurred. I did have a typo. I had Dr. Langer was March the 3rd, his deposition actually occur on April the 3rd, but his deposition is complete.

All of these depositions have been completed and including the economist, all experts, the family members, the grandmother, the two aunts, the mother. So, from our perspective, all the witnesses that we're offering have been completed, with the exception of Dr. Felsher, which will be next week.

The defendants, on the other hand, immediately on the 20th when Your Honor issued your ruling, that was early in the morning on West Coast time, I offered our experts and witnesses and I asked for their witnesses. And they sort of slow-walked me, but I eventually got them on track and we have a schedule here. So I deposed Target last week, I finished their -- or the person most knowledgeable yesterday at Skadden Arps in New York, and so that was finished.

What I've highlighted in yellow are the four experts and Dr. Sanchez is the only one that's beyond May 15th. And Dr. Sanchez, I've cross-examined him, they argued last week dozens of times, but only about six or seven times. He's their testing expert to say there's no asbestos, he's the only

witness they have to say there's no asbestos in their talc.

He says -- or they say he only has that date to be deposed. He was deposed on Monday in a different talc case and he was asked what's he got planned over the next few weeks. He says, I'm working on reports. He didn't identify any real conflict other than working on reports. But if May 17th is the only day they want to give me, you know, after jury selection, if Your Honor allows us to go forward, I'll depose him on that day or have somebody depose him on that day.

So all of these dates are before what Judge Seabolt believes when the case should start.

And Judge Seabolt, we appeared before him on the 20th and on the 27th. And this is a transcript, I've submitted the entire transcript to Your Honor yesterday from last Thursday, the 27th, and this is Ms. Brown suggesting to Judge Seabolt, she suggested that maybe we shouldn't even -- he shouldn't even be able to discuss setting for trial. And Judge Seabolt responded and said we certainly can discuss potentially when the trial might begin. And he says -- and I highlighted it -- "It is true we don't have the go-ahead to do that" -- go-ahead to do that, actually set the trial, but my hope is that he gives us the go-ahead on May the 3rd.

And Ms. Brown responds, "Yes, Your Honor, I understand that."

And the court says, "We might be saying exactly the

same thing."

Ms. Brown says, "I think we are, Judge, except that I thought you were suggesting I might have been acting improperly by talking about when we might start trial."

And counsel of course said, no, no, I don't think you are.

So what Judge Seabolt decided is that he can decide all outstanding motions tomorrow, the 4th, and they can be fully briefed and argued next Thursday in the afternoon. And the genetics motion, they filed a motion to do some more genetic testing, we opposed it. I think they're submitting a reply either already or today. They have a motion regarding one of the experts, Dr. Longo; we briefed it, we objected to it. And they have a motion for summary adjudication on the fraud count, and the court said he would hear all those arguments tomorrow afternoon.

Also, he's said that he would set aside next week, the week of the 8th, to deal with any additional motions, expert motions or any additional issues because, originally, on the 20th, I suggested we start picking a jury on the 8th, and now I've pushed that back a full week and to May 15th to give His Honor -- first of all, to give Your Honor the chance to say it's okay, but then to give His Honor, Judge Seabolt, the chance to overrule any outstanding motions.

And in the transcript, I don't know if Your Honor has

had a chance to read it, Judge Seabolt explains how the California legislature requires that cases be tried within 120 days of a preference order. And he takes the California law seriously and he actually in the transcript said, but for the two bankruptcies, this case would have already been resolved because the Coight (phonetic) case, which we tried, me and Ms. Brown tried, it settled after jury selection, that case was set for trial after the preference setting after Valadez. So this case would have been resolved long ago. And Judge Seabolt said this is the most serious case I've seen.

Judge Seabolt also: "I do think the 15th is probably the most practical target date, but I would like to try and make sure that we are as firm as possible. And I realize Judge Kaplan needs to make a decision and that's fine. This is an unusual situation, but in fact he controls my calendar, at least in this case."

So then I asked Judge Seabolt specifically, "So it's very clear, Judge Kaplan, if he allows the case to be released from the stay next Wednesday on the 3rd, would this Court be able to begin trial somewhere around the 15th?"

Judge Seabolt said, "That's what I'm planning on."

I said, "Thank you."

He said, "This isn't entirely within my control, but that's certainly my hope and plan and I don't have a conflicting trial."

As a matter of fact, last Thursday, when we were making the argument, there was a jury that -- a jury returned a verdict in a mesothelioma case right after this argument.

Now, Dr. Roy, the treating doctor, was deposed and in her deposition she described how his disease has progressed. And she said, "I think he's really towards the end of his life. I don't think that there are any really validated treatments left. I have consulted with physicians throughout the country about his case and different treatment options available. This next chemotherapy that I'm changing to, I do not have very high hopes for. The hope is, essentially, just to prevent additional growth. I do not anticipate significant shrinkage or benefit from the next treatment."

So the photograph I showed you at the beginning I think is that new chemotherapy that she's talking about there.

Also, in her record she described a sale and the question was asked, "Can you elaborate what you meant there by the approximate four to 4.5 on a 5 scale?"

She said, "Sure. I apologize that's not clear. Mr. Valadez has had a really hard time discussing any imaging results from the start of his case. In the middle of his treatment course, he was able to discuss that a little bit more, but that had declined in light of bad news. So he wanted me to say, one being good and five being kind of the worst possible thing, where would I rate it, and not go into any more

details on the imaging," the scans, the chest X-rays and such.

"So on a four to four and a half is towards the worst possible scenario then; is that right?"

And she says, "Correct."

So I'm getting close to the end of my presentation here, Your Honor. This is just an overview. Your Honor has seen this slide several times where Your Honor lifted the stay last June and we got the trial setting for November, and it was continued to December, until January, to February, and then it was set for trial April 17th. And now, I believe, May the 15th we should be able to try this case, according to Judge Seabolt's schedule.

So I would request Your Honor apply the Mid-Atlantic factors that Your Honor and I talked about many, many times. I would request Your Honor to fully lift the stay, allow us to proceed to trial, so this man can have his day in court before he dies.

THE COURT: Mr. Satterley, let me just clarify because there's a little confusion in my chambers and with me.

We looked in the complaint, LTL is not a defendant, it -- correct? Or I thought it was simply Johnson & Johnson.

MR. SATTERLEY: So the way it works under California law, you did not allow me to -- wait, let me just think -- I'm getting my cases mixed up.

THE COURT: So I'm wondering if this is stay relief

or just modifying the injunction as to third parties.

MR. SATTERLEY: I think --

MR. BROWN: Mr. Satterley, you amended the complaint to add LTL.

MR. SATTERLEY: Yeah, under California law, what's called Doe'd them in, you have a Doe defendant. So we Doe'd them in, so LTL -- with Your Honor's permission on Valentine's Day, I believe.

THE COURT: That's fine. I just wanted to clarify that.

MS. BROWN: Yes.

THE COURT: All right.

MR. SATTERLEY: Any further questions, Your Honor?

THE COURT: No, thank you. Thank you.

Ms. Brown?

MS. BROWN: Thank you, Your Honor. And may I approach with a copy of the --

THE COURT: Yes. The paper, right? Mr. Maimon's paper is the thickest. It's cardboard.

MS. BROWN: May I proceed, Your Honor?

THE COURT: Yes, please.

MS. BROWN: Good afternoon, Your Honor, Allie Brown for the debtor.

Your Honor, Mr. Maimon started his presentation today talking about just the facts. The facts are that the vast and

growing majority of claimants support the debtor's proposed plan. Those are the facts that have come to this Court through real evidence and real testimony in this case, through the depositions of Mr. Watts and Mr. Pulaski, through signed PSAs, through attachments to those PSAs that identify the individual claimants and identify the lawyers that have pledged the support for this plan. But what is happening here, Your Honor, in this motion is that a single claimant is seeking to prejudice the rights and the interests of the others.

Mr. Valadez is one of perhaps 80,000 or 100,000 claimants in this case, Your Honor. And the Court recognized over a year ago now that permitting a single claim to proceed would prejudice the interests of other claimants, claimants whose lawyers have pledged support for a quick, fast plan of reorganization.

Your Honor, just a few a weeks ago when you were reading your order in this case, you again raised the Court's concern if it's ever appropriate in a case like this to start picking and choosing one claimant out of tens of thousands of claimants, many of which we believe will be in support of a quick plan of reorganization.

Your Honor, at the time the first bankruptcy was filed, as the Court has heard, there were over 40,000 claims that had been filed against the debtor. We now have evidence today from the representatives of the Ad Hoc Committee, of

firms and lawyers in support of this case, that they represent approximately 60,000 claimants, and we believe the number could be even higher, Your Honor.

What this motion seeks to have this Court do is to select a single claimant out of almost 100,000 claimants and allow that claimant to go to trial. And what's particularly unfair about that, Your Honor, is that many of these claims had been filed 2013, '14, '15, or '16. The Court allowed Mr. Valadez to file his claim less than a year ago, Your Honor. His claim has only been a filed claim for less than a year. What Counsel is asking this Court to do for no reasoned way, Your Honor, is to pick one out of these many, many claimants and allow their claim to go forward. And that threatens the reorganization process, Your Honor, and the progress.

To start, Mr. Valadez is asking for an enormous amount of money. These are the demands that were made in the case, these notices pursuant to California Civil Procedure Code, a $20 million demand against Johnson & Johnson and a $20 million demand against LTL.

And I can assure you, Judge, having tried six of these cases, that if this case were to get before a jury, if this case, where there are punitive damages are at play, Counsel will ask for far more than $40 million from that jury.

And so we have a situation where one claimant is seeking to get before a jury and ask for an enormous amount of

money while we have come before the Court at the very same time, with the support of more than 20 firms representing 60,000 claimants, in an effort to propose and get a plan to a vote. Your Honor has heard we hoped to do that by May 14th and Counsel is asking for a trial in Valadez to start the very next day. What could threaten more, Your Honor, the efforts to get a plan out to tens of thousands people than to allow one of them to proceed with a single trial.

Your Honor heard from me last time about the evidence we have based on filings and based on statements in California that this plaintiff's counsel intends to put this bankruptcy on trial in California. I told Your Honor about a motion *in limine* we filed in Valadez seeking to exclude as irrelevant and prejudicial reference to this ongoing bankruptcy, Your Honor.

We reviewed with the Court last time plaintiff's opposition to that motion and plaintiff's stated intention that evidence relevant to the bankruptcy could come in for and was admissible for numerous purposes, Your Honor, including the punitive damages and the motivation and biases of all defendants and their witnesses. But, Your Honor, as discovery has now proceeded at a breakneck pace in Valadez, we have more granular information about the intentions to have a trial going on where the propriety of this bankruptcy is before a jury in California.

This is a letter we received from Mr. Satterley's law

firm just a few days ago disclosing reliance materials for their expert witness Mr. Johnson. The Court should be alarmed to see that some of the reliance materials for this witness include the Third Circuit's opinion, which was sent to this expert by Counsel highlighted with the sections they wanted him to pay attention to, the amended and restated funding agreement, and excerpts from the oral argument in front of the Third Circuit, Your Honor.

As if there were any doubt in our mind that Counsel intends to put this bankruptcy, this ongoing bankruptcy before a jury, we have a statement on the record from now just a few days ago from Mr. Satterley's colleague about what they intend to do with information about this bankruptcy.

And, Your Honor, what Mr. Reed, Mr. Satterley's partner, said just on the record a few days ago is that, as discovery continues and goes on through the claimant bankruptcy, including discovery propounded by the Kazan McClain law firm just last night on LTL and assorted individuals. As that information is discovered and rulings are made in Bankruptcy Court by Judge Kaplan and/or by the Third Circuit, we'll be providing those to our expert Mr. Johnson with these additional materials, and maybe we'll let you take his deposition, but we might also take the position that because you committed these bad faith acts we're not going to give you the deposition.

But the point is, Judge, they made entirely clear on the record that they intend to funnel the discovery they get from this case to their expert in this state court case, and it underscores all of the evidence, Your Honor, we reviewed last time that they intend to put the propriety of this bankruptcy on trial in California.

The Court will recall the documents and testimony about the Trailblazers documentary film crew that intends to be in the courtroom, capturing what they termed to be a bankruptcy saga. Mr. Satterley informed the California court that there's going to be another crew there from Courtroom View Network, they're going to be there as well filming what all of this correspondence suggest what they believe to be a bankruptcy saga.

And so, unquestionably, Your Honor, there will be active efforts captured by a documentary film crew that will no doubt harm the debtors reorganization efforts and prejudice the rights of tens of thousands of claimants who do want to get a plan to a vote, who do want compensation in a fair and equitable manner.

And, Your Honor, we heard a ton this morning about the Future Claims Representative. And, I have to admit, I didn't really follow Mr. Maimon's slides either, but I did understand the point was that he was concerned about other claimants, about future claimants, and about how those future

claimants were going to be treated.

And that's ironic, Judge, because, as you know, our tort system can't provide for future claimants, but it's also particularly ironic to come right before a motion like this where Mr. Maimon's colleague seeks to put the interests of one of his clients, one of the 13 clients he represents, above all other current and future claimants.

Your Honor, I reviewed with the Court last time how the discovery in this case, like many other cases I have tried, is revealing that the evidence and the facts and the truth do not support the claims being made in this lawsuit. And I won't belabor the point, Judge, but just to update the Court on a few developments regarding pieces of evidence that have been put before you, Judge. We've seen now several times this slide of the causation experts who Mr. Satterley believes will come to court and support his claim that the most rare cancer, a cancer that only 15 people get each year, was caused by one of the most common products, baby powder.

But Dr. Roy was deposed just this week and she said she'll do no such thing. She said, when she got the declaration from Mr. Satterley, she redlined and crossed out all of the business about causation because she did not make a determination in her care and treatment that Mr. Valadez's cancer had anything to do with Johnson's Baby Powder.

She was asked, well, do you even have an opinion

about whether Mr. Valadez was exposed to asbestos at all? And she said not within the materials that were provided to me.

And, Your Honor, to be clear, we saw some heart-wrenching pictures of Mr. Valadez -- of Emery Valadez. Emery Valadez has an awful, awful disease that will no doubt take their life very soon. But unfortunately, Judge, that is no different than any of the other claimants in this litigation because both ovarian cancer and mesothelioma are, unfortunately, fatal diseases. And so Mr. Valadez is in a situation that many -- most, if not all of the claimants involved in this litigation are in. They are facing absolutely awful diseases that were not caused by Johnson's Baby Powder.

Your Honor, we spoke last time a bit about the picture that was produced and Mr. Valadez's mother's testimony that this was indeed Emery's nursery and this was indeed the bottles. Your Honor heard that the picture actually was taken three years before Emery Valadez was even born. That will certainly be an issue if that case ultimately tries. But what has happened just within the past couple of weeks is that the retailers have produced loyalty records.

This is a case, like many others in this litigation, where the plaintiffs have testified about making specific purchases of baby powder at specific stores. And that certainly was the testimony of Emery Valadez's mom that she made specific purchases. In fact, her declaration in this very

bankruptcy, Judge, said every two weeks from the time Emery was born up until 2022, every two weeks, purchases at these stores. Well, we got the records this week from Target and what they show is a lot of purchases of personal care products, including Johnson & Johnson products like baby shampoo and things like that. Six hundred and eighty three purchases total, Judge, not one purchase of Johnson's Baby Powder.

The truth is, Your Honor, that Emery Valadez themselves testified that they're not even sure they used Johnson's Baby Powder with talc.

We make two products, we made a product with talc and a product with corn starch. The corn starch product is not the subject of this litigation, but when questioned, Emery Valadez wasn't sure if it was the baby powder with talc or the baby powder with corn starch that they claim to have used. And that testimony is entirely consistent with the testimony of the grandmother and the aunts who were deposed who also said, you know what, I'm not sure if it was the corn starch or the talc version.

And so, Your Honor, we have a case, like many of these other cases, where there are significant product identification and product usage issues.

Very quickly, Your Honor, because Counsel spent quite a lot of time on what's been done and what remains to be done, we have done enormous work, Your Honor, since the Court's

ruling that discovery could proceed here. We scheduled and took 12 depositions. We have continued to brief and will tomorrow argue the genetics motion. We have moved to compel genetic testing, plaintiffs have opposed. We have an issue with the destruction of evidence by one of plaintiff's experts, these polarized light microscopy slides; that has been briefed over the last two weeks, we'll argue that tomorrow.

We have filed, as the transcripts have become available, additional deposition designations, and we are working enormously hard to get our own copy of medical records, which, Your Honor, often has a very big lead time. And so while plaintiffs have instant access to it through their client, we are disadvantaged because until the provider can get us the records, until plaintiffs can release them to us, we don't have them.

So those efforts have been going on nonstop, Your Honor, since the Court's ruling, but there still remains work to be done. We have nine expert and fact depositions that have not been completed and are continuing. We have 13 depositions from which we need to designate testimony, Judge. That can't be done until the transcripts are final and we don't have these 13 files contemplated yet.

I mentioned the challenge about getting medical records in this time period. We have not yet argued or received rulings on motions *in limine*. We have motions we will

make to exclude their experts, I expect they'll do the same for ours. We have the genetic testing motion, we have the spoliation motion. The question of whether this court is going to allow Trailblazers in or not has not been resolved, although the Judge has indicated he intends to.

We have additional pretrial submissions and we have a long motion for Mr. Satterley about time limits that we need to argue as well.

But what you heard this morning and what happened -- and this, Your Honor, is to just give you a flavor -- we're trying to get these genetic records and Mr. Satterley has them, and we've asked if you could just, you know, speed up your look on them and hand them to us, and he has taken a position he will not do that.

And so what we have on the most critical issue in the case are records that look like this, you know, key parts of them redacted. We don't have our own copies, we don't know what in this genetic analysis that showed a mutation has been blocked out, and we're facing some challenges, Judge, in trying to get our own copies of these.

So enormous work has been done, to the distraction, in large part, of debtor's counsel, but there a lot of people on this case trying to move forward, consistent with the Court's ruling, consistent with the California court's expectation. But, Your Honor, what happened last week is that

Mr. Satterley represented to this California court that basically you, Judge Kaplan, told us just go ahead and get everything ready, report back on the 3rd, and I'll give the final go-ahead.

And I would suggest to the Court there is no basis in the law, in the Mid-Atlantic factors, and there is no basis in the facts to give what Mr. Satterley has termed this cavalier final go-ahead and start picking a jury in three days. Your Honor, this is one out of almost 100,000 claimants who no doubt has an awful and terminal disease, but so do many, if not all of these claimants. Your Honor has recognized before that it is unfair and in fact detrimental to the efforts to reorganize to allow one out of many to go forward. And so it's not that we should come to you, Judge, and you just give the final thumbs-up, I would suggest it is a serious question of law and fact that is not supported by the evidence. The stay should remain in place so that the debtor can get this plan out to a vote.

Thank you, Your Honor.

THE COURT: Thank you, Ms. Brown.

Mr. Satterley?

MR. SATTERLEY: May I proceed?

THE COURT: Yeah.

MR. SATTERLEY: I'm not going to go down all those rabbit holes, I'm going to talk about a few of those, but most

of her argument seems to be, if she thinks they have such a strong case, it's a jury question or it's the court's, Judge Seabolt's evidentiary decisions based upon the law.

Counsel made an argument that a hundred thousand people are impacted. Since I first made the first motion last May, all the way up until today, not a single person, not a single claimant has objected to my motion coming before Your Honor each and every time. So if there's a hundred thousand people out there, maybe half of them are unknown, but not a single one of these new lawyers that's never filed a lawsuit before, a talc lawsuit before, has even objected.

So that argument is totally without merit.

Many of those slides had misrepresentations. The part about Mr. Johnson and the, quote, "bringing bankruptcy in," I told Your Honor before, we're not bringing, bankruptcy in. I told Your Honor before a jury trial. I don't want some jury to think they're bankruptcy, I mean, that's outrageous. The reason why the bankruptcy was discussed in discovery is Mr. Johnson is the economist and he has to give testimony about the ability to pay should a jury award punitive damages.

And they selected, they selected -- they had the option to bifurcate punitive damages away, but they want an all-issues trial, they want a punitive damage trial, they selected that under California law. So all that discussion about bankruptcy on trial, that had to do with Mr. Johnson had

to review what they've said about LTL's ability to pay.

The slide with the nice grocery basket and the citation to Target. And she says, from 1998, there's zero purchases. I deposed the Target representative last Friday, Target's -- the earliest record they produced to my client's mother was 2021, not 1998, and most of the records were 2022 and 2023, after the diagnosis.

The other photos, they haven't listed a single witness to talk about these photos. They apparently got something off some internet search. It says at the bottom of the slide Weaver Long, I have no idea who that is. They listed no witnesses to talk about it, that's only attorney argument.

The whole issue of corn starch versus talc. Well, the tissue digestion, which is undisputed, has talc and mica in his pericardial tissue right next to his cancer, no corn starch.

I could go on and on and on about this, but the bottom line is a lot of the evidentiary issues is for Judge Seabolt to resolve. If they have such -- if they're so confident this is a merit less case, they'll get a defense verdict, they'll win the case, and there won't be any harm at all, it won't affect any creditors whatsoever.

But the Mid-Atlantic factors do have Your Honor weigh the harm to the creditor, which has been great and significant, versus the harm to the debtor, which all it is right now is

paying lawyers' fees to defend this case.

I believe, Your Honor, irreparable harm will occur if the case is once again continued for I think the fifth, sixth time now, and Mr. Valadez deserves to be heard while he's living.

Thank you, Your Honor.

THE COURT: Thank you. Thank you, Counsel.

I guess for about 20 months now, it seems, we've been addressing this issue specifically to Mr. Valadez. And I struggle, and I think the slides noted, the most difficult issue for this Court has been selection of a plaintiff to move forward when others are stayed, and the unfairness to others who aren't proceeding, the potential impact upon the reorganization.

A lot of work has been undertaken in this case, it's happening daily, depositions and motions in preparation for trial. Judge Seabolt has quite a bit on his plate. Well, I can recognize that, I have empathy; I have quite a bit on my plate with this case. There is a lot of significant issues going on in this case; whether the Third Circuit decides to provide for an early dismissal, whether they reshape the preliminary injunction. There are seven, as I've been told, dismissal motions, which we'll get to. There's a plan process that's going forward, which we'll get to. There is the issues on the Future Claims Rep, mediation, and we are spending an

exorbitant amount of time on this issue that can be better allocated, I think, elsewhere.

So I am lifting the stay and I am modifying the injunction to allow the matter to go forward to trial, not to enforcement or of any judgment against any defendant because I don't -- I'm not prepared to gauge the impact. But, in doing so, I take into account the Mid-Atlantic factors and the balancing the harms.

The concern I have as far as other claimants coming in I'm going to address as follows: they haven't, they haven't to date, nor will my decision today dictate how I will treat them in the future. In fact, I will say, plaintiffs' counsel, the various plaintiffs' counsel that have appeared before me in this case have supported this case going forward and not come forward with the me-too suggestion or identification of other cases. I am not going to be receptive to diluting the injunction one case at a time for 80,000 cases, I'm telling you that right now.

This has the potential to burden the reorganization, I recognize that. In balancing the harms, I believe, without enforcement and if -- depending upon a verdict and depending upon appeals, the reorganization can overcome this hurdle when the time comes, if and when we get that far.

So you can submit a form of order granting limit -- well, that phrase, limited stay relief -- stay relief up

through and including verdict.

MR. SATTERLEY: Yes, Your Honor, I'll submit an order.

THE COURT: All right?

MR. SATTERLEY: Thank you, Your Honor.

THE COURT: Let's move on to other items. We have -- well, let me -- before we move on to other items, let me preface my -- let me make some preliminary remarks.

As I indicated, I respect the Third Circuit, I understand the recent application made to the Third Circuit. If the Third Circuit decides to play a role in an early dismissal of this case, so be it; if the Third Circuit decided to ask me or on its own to reshape the preliminary injunction, so be it; and, if they do neither, so be it. I am going forward with this case, addressing it the way I would any Chapter 11 proceeding, which means I do not intend to engage in beat-the-clock on either side, on the dismissal motions or on the plan process. It's not going to be a race because, at the end of the day, that's not going to be effective. There are too many factors, appeals, stays, and the like.

So I suggest counsel take a realistic approach going forward as to how best to move the plan process forward and how best to move the dismissal motions forward. Let's not have unrealistic expectations on timing. I have seen you all for 20 months argue, nothing happens quickly. All right? It's just

the reality. And we're talking about tens of thousands of claimants and billions of dollars, and I'm not going to treat this case as if it's -- to give it less time, effort, and consideration than I would a Chapter 13 case.

So let's address -- why don't we address a couple of matters. The -- and not on the agenda. Mediation. I have decided to appoint two co-mediators. And I understand, Mr. Molton, there may be a motion asking me to cease efforts going forward in the case pending the dismissal motion. I'll consider it when it gets filed.

MR. MOLTON: Sure.

THE COURT: But as of this point, as I've said, I'm going to treat this as I would any Chapter 11 and do what I think is warranted. I received the input of the debtor and the TCC and recommendations and admonitions of -- as to whether it's appropriate to move forward with mediation. I think it is. I always think talking serves a purpose in trying to come to a consensus.

I have decided to appoint two co-mediators, Gary Russo, who's been involved in this case, and Eric Green. Both are well-known, obviously Mr. Russo from his experience already.

I'm confident everyone in this courtroom is familiar with -- I'll call him Professor Green, a law professor at BU for 30 years. Founder and a chief mediator at JAMS in Boston.

Involved as FCR in multiple asbestos bankruptcies. A special master in Takata Airbags. Also involved in, as a special master in Ohio, asbestos litigation.

He's well-qualified. If there's any -- if you need any information, the Court is happy to supply the CVs. But I'm pretty confident that's not a name that's unknown to the professionals in this room.

I am going to ask them to undertake to pursue mediation immediately. I am cognizant of the TCC's request that there be a limitation on ex parte communications with the Court by the mediators. Notwithstanding, I will permit -- I will authorize the co-mediators to have ex parte communications with the Court on procedural matters. I've never had discussions as to dollars or substantive matters with the mediators. I don't intend to start now.

I will require that both mediators be present on any conversation with me. I've chosen the mediators, because I recognize -- at least it seems that both the debtor and the TCC are comfortable with one or the other but maybe not both. Well, that to me serves as the best check and to ensure that there's no untoward influence. But in any conversation I'll have with the mediators, both mediators will be involved unless one authorizes another to speak to me on their own for ease or to facilitate a conversation.

The mediators will have full authority -- we're going

to work off of the prior amended mediation orders. I will ask debtor's counsel to supply a draft -- the most recent draft. I may mark it up, so please send it in Word.

I will authorize the mediators to have full authority and discretion to conduct the mediation as they seem -- or they deem it appropriate, to require the attendance of such parties as they deem appropriate. So submit an order to that effect.

It is not my intention to delay mediation past motions to dismiss or the plan process, because, as we've seen, they take on lives of their own. And I don't think any day that goes by benefits by not having people starting to talk.

MR. MAIMON: Your Honor?

THE COURT: Yes?

MR. MAIMON: With regard to that, the motion that had been pending by the debtor to appoint both Mr. Russo and Judge -- retired Judge Schneider, which was withdrawn, we --

THE COURT: That was withdrawn.

MR. MAIMON: We were going to file opposition because of what we learned in discovery about their involvement in the discussions before the dismissal of the first bankruptcy. Because they withdrew the motion, we didn't file any opposition.

But we would have opposition to Mr. Russo. And I'm asking the Court leave to make that application that he not be appointed as a mediator. This would have been done already but

for the withdrawal of the motion. And we just believe that we are entitled to bring that issue before the Court.

THE COURT: I'm overruling the objection. You're free to file a motion.

MR. MAIMON: Thank you.

THE COURT: That I would never deny.

MR. MAIMON: Thank you.

THE COURT: But I'm not modifying my determination to appoint them as of today co-mediators.

MR. MAIMON: We always seek permission to file motions.

THE COURT: All right.

MR. SATTERLEY: He does. Not me.

THE COURT: I wish I had the authority to say no.

MR. SATTERLEY: Mosh does. Not me.

THE COURT: All right. Let's talk about the motions to dismiss and timing. I believe correspondence was submitted and was -- on behalf of the Committee and responded to by debtor's counsel.

And I understand the Committee's position as far as not wishing to consent or -- it's not even just the Committee. We have U.S. Trustees. We have other parties who filed motions or joinders.

And I understand the unwillingness to consent to an extension of the time frames listed under 362, the 30 days to

commence and the 15 days for which I'm supposed to whip out a decision. But we're dealing with seven motions. We're dealing with a court calendar that is difficult to block out the days, quite candidly. There are other cases and other burdens.

We're dealing with a much more compressed time frame than you afforded me the last time where we started in December talking about dates in February. Now we're talking about dates in the next three weeks. Well, I don't have three, four, five days so easily just to give.

But I'd like to hear from the counsel as to what are their expectations as far as days that would be required. Let me turn -- since these motions to dismiss are by plaintiffs' side, does the Committee or others have a sense of what they're looking for as far as a time commitment?

MR. MOLTON: Michael, you want to --

MR. WINOGRAD: Good afternoon, Your Honor. This is Michael Winograd for the TCC -- proposed counsel for the TCC. Your Honor, I will try and tailor what I was going to say to what Your Honor has just said. And I -- we appreciate the fact that Your Honor has said that this is not going to be a race to beat the clock.

We are most concerned with delay. Obviously, we've -- it's been said numerous times before. There are many victims that have been subject to delay. There was a great deal of hope after the Third Circuit opinion came out and after

this case was dismissed, and that lasted just over two hours.

There is a statutory time period of 30 days to begin a hearing and 15 days from the beginning to render a decision. In terms of what our expectations are, Your Honor, it's important to remember -- and I'd be happy to very briefly summarize some of the cases that were pointed out in the letters by the debtor. It's important to remember we're not starting from scratch.

This case has been litigated through a full motion to dismiss trial. The Third Circuit ruled just a few months ago. Since then, the new facts that are relevant are very narrow. And we had significant discovery and an evidentiary hearing on them just two weeks ago.

So our position is we're -- we think that this case can be decided on a motion to dismiss as is. If the -- Your Honor believes that there is some incremental discovery that needs to take place on the new facts that haven't already been covered in the preliminary injunction hearing, we think that can take place certainly within three weeks. Now, I understand Your Honor is talking about how long the hearing will take and whether Your Honor can schedule that.

And if you look at just the law and the cases which I think are informative to Your Honor's question, counsel looked -- counsel for the debtor looked like -- you know, searched the entire country, pulled all the cases it could find

where these motions were granted. If you look at four out of those six cases, they're just granting an extension of time for the court to render its decision, because the court's calendar was full. And those weren't lengthy extensions.

If you look at the only cases that extended the actual hearing date, one was extended by six days, again so the court could find time within its calendar to do it. And it was a six-day extension. The other one, I think, was granted a month, but that was on consent. It actually had the hearing within 30 days, during which point at the end of the hearing the parties said we consent, we all think we need a huge amount of discovery, and the court granted it at that point.

So in terms of what we think, Your Honor, there's not much discovery that we think needs to be done, if any at all. If it -- there is discovery to be done, this new sort of bucket, it can be done very quickly and certainly within three weeks.

And then we think that Your Honor -- it's -- we have talked -- in terms of the length of the hearing, we've talked with the other side. And, obviously, subject to your Court -- Your Honor's preferences, we think most of these witnesses can come through deposition designations. They've been deposed already. Again, I don't know how many really need to be re-deposed.

We could put these witnesses in through deposition

designations. The number of live witnesses would be, I would have to think, maybe a few. I don't even know that we need new expert opinions. If we do, that's, you know, a few experts.

This is a few-day trial at most, Your Honor, at most. Now, I know that the other side has taken the position that they're going to need six to eight fact witnesses and -- I think it was two to three experts. We think this is just an effort to deluge in extraneous witnesses and facts.

We don't think it's that -- it's necessary. But, again, the experts can come through their expert reports, at least for direct examination. And most or all of these witnesses can come through a designation.

So subject to your Court -- Your Honor being able to schedule two, three days, we think we can certainly do this within the time frame.

THE COURT: All right. Well, but you envision calling witnesses, correct?

MR. WINOGRAD: Well, Your Honor, again, so what we would envision --

THE COURT: I'm not going to dictate to you what discovery you should take.

MR. WINOGRAD: Yeah, yeah. So in terms of what discovery we can take and what witnesses will be called, we had had conversations about, you know, exchanging witnesses lists in advance of today so we could understand this. But we're in

a position where we can't really tell Your Honor.

It's their burden. It's mostly their witnesses. We need to see what they intend. I was surprised to hear they have witnesses offering new evidence. To the extent that there are witnesses with new evidence, we'd have to take a couple of those depositions. But in terms of live witnesses at trial, Your Honor, I don't know that there's more than, you know, one, two, three instrumental witnesses who would have to testify live as opposed to by deposition designation.

And, Your Honor, really, the only -- you know, if I could just take a brief moment. The only bases that the other side has offered is -- as Your Honor has pointed out, there are seven motions to dismiss. We think that, in part, speaks volume for the dismissability of this case.

But in any event, those motions are largely overlapping. I suspect there will be one omnibus reply, which we hope -- response or objection. We hope to get that in advance of being able to tell Your Honor what our discovery or witness strategy will be. But they're largely overlapping and largely say and emphasize the same points.

They've talked about discovery. I've already addressed that, Your Honor. We don't think there's much new, and we think we can do it in the time frame. And, again, they've talked about the trial -- you know, the witnesses. And again, Your Honor, I think most of those can be handled through

deposition designation, and we can do this in a very timely and efficient manner.

And, Your Honor, if -- consistent with about four of the six cases they cited, if Your Honor gets to the end and feels this is an extremely -- you know, there have been new issues raised and Your Honor needs more than the 15 days to render the decision, then Your Honor will tell us how much time Your Honor needs. But that issue, I think, is premature at this point, certainly not -- doesn't warrant putting off the actual trial.

THE COURT: All right.

MR. WINOGRAD: Thank you, Your Honor.

THE COURT: Thank you.

Mr. Gordon?

Oh, Ms. Richenderfer?

MS. RICHENDERFER: Thank you, Your Honor. I have to make my trip worthwhile today. Your Honor, Linda Richenderfer on behalf of the Office of the United States Trustee. Your Honor, I think in large extent we agree with what counsel for the TCC said.

I liken what we're looking at as to what we looked at when we did the preliminary injunction hearing. You had multiple, multiple objections that were filed. There was organization, though, on behalf of the parties who were objecting or who were against the relief that was being sought

by the debtor.

I think that this time we've had some experience and hopefully this time will be -- we can be just a teensy bit better in terms of not overlapping each other. So I'm not saying that there wasn't room for improvement, but I think it could have gone far worse. Could have gone far longer, I should say.

Your Honor, I think it's -- this is largely an issue of law. I think it is largely an issue of law that's been raised in all of the motions. And it's law applied to the facts that are already before this Court. And the facts were brought in through the motion for a preliminary injunction.

And designations can be done. We have time now. We didn't have time before. Very, very compressed schedule before the hearing on the preliminary injunction motion. We now have three weeks. To a lawyer, that's like a lifetime. Before, we had two days. I mean, we were doing depositions up until 8:00 the night before the --

THE COURT: Well, you were all asking for a sua sponte decision.

MS. RICHENDERFER: Well, that --

THE COURT: You know, look at the irony there.

MS. RICHENDERFER: Well, my office was not, Your Honor.

THE COURT: We're talking about days of trial and

designation of discovery, and I was supposed to make a decision in hours.

MS. RICHENDERFER: Well, to be clear, Your Honor, the United States Trustee did not ask for that sua sponte ruling. We do believe there needs to be a record that is put together, because, unfortunately, I think that whichever side does not prevail will be seeking relief elsewhere. And we understand the importance of Your Honor being able to put together that record. And we want to put together that record.

THE COURT: Well, and I agree with you. Because what nobody needs is a remand.

MS. RICHENDERFER: Exactly, Your Honor. To me, this is the remand.

So, Your Honor, I think that normally I would say this should be a one-day hearing. But I saw what happened with the preliminary injunction. And when we've got closings that take three hours, it means it's a two-day hearing.

But I do think that, again, I echo what was said by TCC counsel. We don't know what the party to the left of me, who bears the burden of proof, is going to put on. But I don't know what more they can or should be saying other than what's in Mr. Kim's first day declaration. That's supposed to be the support for this filing. That's supposed to tell the world, the Court, the U.S. Trustee's Office, everyone else why this case was filed.

And there was an opportunity to take Mr. Kim's deposition. There was some cross-examination of him in court that day. And I don't know how much further anything really needs to be taken.

I don't know what other evidence. Does it need to be compiled together for Your Honor in a very organized fashion? Most definitely. We owe the Court that.

But I see this as, like I said, primarily -- it's a legal argument based on the facts that have been set forth by the debtor in its own first day declarations. So, Your Honor, the U.S. Trustee would agree that limited hearing -- like I said, I would say one day, but I saw what happened. A lot of people want to speak. So I would say two days.

THE COURT: All right. Fair enough. I will --

Come up, Mr. Satterley.

MR. SATTERLEY: Yes.

THE COURT: I, of course, have to bear in mind the admonition of the Third Circuit when they didn't care for my casual math. Well, all right. To overcome casual math, I need a record. So I'm not sure I share the optimism here, but we'll see.

Mr. Satterley?

MR. SATTERLEY: Yeah. Joe Satterley, Kazan, McClain Satterley & Greenwood. I would suggest -- I'll echo what the U.S. Trustee just said.

I would suggest that the debtor share with us over the next day or two -- I thought they were going to do it last Friday -- what witnesses, what evidence, what information they have. And then we meet and confer. And then next -- I think Your Honor said next Tuesday, you've got a hearing scheduled in this case. Then we will -- we'll be in a better position to advise Your Honor exactly the length of anything.

I agree for the most part this is a question of law. But the debtor seems to think that they're going to be putting on a lot of witnesses. And so I would request Your Honor to order them to do what I thought they were going to do last week and tell us, well, who are the witnesses and what's the scope of their testimony. And then we can meet and confer regarding, you know, whether that's really actual testimony that needs to be heard live or whether depositions are sufficient.

So that's my suggestion. The other suggestion would be they could file a written opposition outlining their arguments to the motion to dismiss, preliminarily at least, so we know what their arguments are and what they think is important. I think that will give everybody guidance on what a trial would look like. Thank you, Your Honor.

THE COURT: All right. Thank you, Mr. Satterley.

Ms. Richenderfer?

MS. RICHENDERFER: Your Honor, I apologize. I got back to my seat and I was reminded by my co-counsel. I forgot

an important point. We don't see the need for expert discovery here. Your Honor made a remark about what the Third Circuit said about the record in terms of numbers of claims. I don't -- that's not an issue at least that the United States Trustee sees.

I do see -- think that we are starting from a point in time. We're not starting fresh. We're starting from a point in time, and it's a point in time when the Third Circuit said this case, they do not show financial distress. And we're starting from that point in time.

And then we're moving forward from that point in time. Do they -- can they show financial distress at this point in time? And as I said during the preliminary injunction hearing, are we looking at a debtor that still basically has the same assets? They're just in different form, fraudulent conveyance claim and a settlement or agreement with its ultimate parent corporation that's worth an amount less than it started with.

But we're not starting from scratch. We are starting from the Third Circuit opinion on --

THE COURT: Well --

MS. RICHENDERFER: I don't see why we need experts.

THE COURT: I'm not sure I agree. I'm certainly wiling to listen to argument.

MS. RICHENDERFER: Uh-huh.

THE COURT: The Third Circuit looked at a snapshot the day of --

MS. RICHENDERFER: Right.

THE COURT: -- the petition from the first case.

MS. RICHENDERFER: Uh-huh.

THE COURT: The Third Circuit or any reviewing court and I have to look at a snapshot the first day of the petition in the new case.

MS. RICHENDERFER: I --

THE COURT: And that's the comparison.

MS. RICHENDERFER: And I understand, Your Honor. And I think the Third Circuit's already spoken to that in footnote 18. It's unbelievable how much people can read that and disagree about what it means.

THE COURT: In this case, nothing is unbelievable.

MS. RICHENDERFER: Well, I guess that I should -- but you're right, Your Honor. It's a different point in time. It's a point that's 2 hours and 11 minutes later. It's a different point in time.

But we -- same number of claimants. They may be current now whereas before they were future. That's where I'm still puzzled by these numbers of people, where they're coming from. So I guess that between the first filing and the second filing, futures all of a sudden became current. I don't know.

But it doesn't make a difference, the number of

claimants, because we have here now a pot plan whereas before we had a plan that went up to $61.5 billion. I think Mr. Gordon even said it today. The whole idea was not that that much money would be turned over but enough money would be turned over so it was a 100 percent plan.

And so, at this point in time, Your Honor, I think that there is the need to, you're right, look at the two points in time and what changed. And I think that's what the motions to dismiss -- at least I know our motion to dismiss focused on, to a great extent, what changed and was the debtor allowed to make that change or did the debtor do something it should not have done while it was still in that position.

Your Honor, earlier today I was talking about prepacks. And I've dealt with them in Delaware. Prepacks, you've got a company that's sitting there and it can do whatever it wants to do. And Imerys started off that way. It brought in Mr. Patton.

THE COURT: I don't want to get too far afield.

MS. RICHENDERFER: Okay. But my point is this, Your Honor --

THE COURT: We'll be arguing it.

MS. RICHENDERFER: -- prepack doesn't apply here. They were already in bankruptcy. You can't do a prepack when you're already in bankruptcy to go from one bankruptcy to the next. I'm sure they're going to disagree with that. But, Your

Honor, I think the concept doesn't fit within the reality of what happened here.

THE COURT: Fair enough. Thank you.

Ms. Jones?

MS. JONES: Thank you, Your Honor. Good afternoon.

THE COURT: Good afternoon.

MS. JONES: Your Honor, Laura Davis Jones of Pachulski Stang Ziehl & Jones on behalf of Arnold & Itkin. Your Honor, just very briefly. We do not believe that there's any further discovery needed. I agree with the U.S. Trustee that we're at the point now that we're talking about largely legal arguments that would be discussed. And those -- and they're based on facts that are already in the record, Your Honor.

Your Honor, with respect to the debtor filing a response, Your Honor, obviously, if they have a response, the burden's on them. So I would expect they would get their papers in. But I think, Your Honor, like a lot of lawyers, unless we see a deadline, things don't get moving along.

So I'd suggest, Your Honor, as where we stand right now that we move forward, have the motion to dismiss heard on May 22. If parties decide that they do need more time for whatever reason, we can bring that matter before Your Honor at that point.

THE COURT: All right. Thank you, Ms. Jones.

MS. JONES: Thank you.

MR. MAIMON: If I could raise just one point, Your Honor?

THE COURT: Yes.

MR. MAIMON: And that has to do with claims. And I hope this is well understood. You can't have more than all, right? If I have all of something, I can't have more than all of it.

LTL 1 was filed to resolve all talc claims. You may put them in the future bin. You may put them in the present bin. But that's just moving things from one jar to another. It was all then. They say it's all now. You can't have more than all.

THE COURT: All right. Thank you.

Mr. Thompson?

MR. THOMPSON: Clay Thompson with Maune Raichle. We strongly join all of that. There's no discovery that's needed. They filed on April 4th. This is their scheme. Not ours.

They're a bad faith debtor. They have the burden. We don't need to listen to four days of how bad the claimants' bar is again. The Third Circuit already ruled on that issue anyway.

And Mr. Ruckdeschel is texting me frantically to say that he joins for Mr. Crouch that no discovery is needed. Thank you.

THE COURT: I see his hand up, but that's fine.

All right. From the debtor's perspective?

MR. GORDON: Thank you, Your Honor. Greg Gordon, Jones Day, on behalf of the debtor. I find it remarkable that the parties who filed motions to dismiss and proclaim that it's our burden, and we don't dispute that, would then attempt to dictate how we should meet our burden and what we should be required to do and should circumscribe this process in the manner that they're proposing.

And, you know, I will say to Your Honor that we've had meet and confers with the other side before today about scheduling. And what you're seeing today is a reversal in position on where they were just last Friday or so. And this is reflected in the letter that we sent in.

Last Friday -- and maybe it was last Thursday. I can't remember. Where they were was we need discovery. We will have two to three experts. We expect to have four fact witnesses. And we need you, the debtor, to tell us who your witnesses are, fact and expert; and, in fact, that information should be exchanged on Tuesday, the Tuesday that just went by.

And we actually agreed to that. And the schedule that we put in the letter to Your Honor is the schedule that we proposed to them last Friday based on the discussions that we had.

So since those discussions last Friday and today,

there's now a complete reversal in position that, oh, no, no discovery is needed. We don't need anything. And we also are basically asking you to order that they, the debtor, is not entitled to anything. Now you're being asked to order us not to do any expert discovery.

And this has just gotten to the point of being ridiculous. I mean, we literally on Friday were to the point where each side had said about four fact witnesses and two to three expert witnesses each. Based on that, there's no conceivable way that could be tried by May 22nd. They know that.

And so what we then tried to do was come up with a -- what we thought was a very compressed schedule under those time frames. Now, for parties to come up here and say this is all legal, I don't see how they can make that contention based on what's been filed with the Court. There are legal issues imbedded in this.

But their number one issue, for example, is there's no financial distress. That's a factual issue. And Your Honor made the point that I was going to make. The Third Circuit was critical of the fact that the first time around there weren't sufficient projections in the record about -- that go -- went to the issue of financial distress. Well, we expect to have experts who would address those issues.

Part of their case is that we, again, engaged in the

largest fraudulent conveyance in the history of the United States. Those are -- there's legal issues there, but they're factual issues as well.

They've also said that our support is all fake or its de minimis. Those are all factual disputes. Those are raised. Those would be addressed as well.

So there's any number of issues that would need to be addressed. And to me, it would be completely unfair for there to be directives from this Court that we have to try our case in a way that works for the objectors, particularly given that it's our burden to make the case.

So, Your Honor, if you'd just look for a moment at the schedule. And we tried to think through what all the deadlines would be. And I don't think anybody can look at this and say that these deadlines are unreasonable or reflect delay.

Again, if you look -- the very first date which we had talked about was service of written discovery requests and simultaneous identification of fact witnesses, including statement of topics of testimony and whether the party expects currently the witness to be presented live or deposition designation. That was to have been done yesterday.

We advised Mr. Winograd and the other side we were still prepared to do that. And Mr. Winograd told us that, well, we're not willing to do it anymore. And so for Mr. Satterley to come up here and say, well, we were expecting

to know about this by today, the reason they don't know about it is because they wouldn't do what they -- we thought they had agreed to do earlier.

And then if you go down the deadlines, then by May 12th the parties would identify expert witnesses, including their CVs and anticipated opinions. The 19th, discovery responses and productions would be due. I mean, this is all accelerated. The 24th, objections to motions to dismiss due.

So we -- and we would anticipate filing a single response brief. We think that'd be easier for Your Honor.

And one thing I would add at this point, the motions to dismiss keep coming in. There were two more that came in just on May 1st, one from the U.S. Trustee, one from the Itkin firm. We probably ought to add a deadline by which no further motions to dismiss can be filed, because I don't think it makes sense for anybody to go down this road for two or three weeks, then to have two or three more motions filed. So I think maybe we would add to that list.

But continuing. You got expert reports served on the 30th. Fact discovery completed on June 6th. Expert discovery completed June 20th. And then one week before the hearing, you designate deposition testimony, you proffer exhibits, et cetera.

And so that, to me, is an enormously compressed schedule. We thought something like this would fly. We've now

been told that it's May 22nd or nothing. And that, to us, just isn't realistic.

So whether we go with exactly this schedule -- obviously, we're not going to insist on that. But something like this, it seems to us, works. This is what would be approximately the time frame that we had for the motion to dismiss -- or the motions to dismiss in LTL 1. It's about the same period of time.

But if you look at these dates and you think that -- we believe we're going to have two experts. They've said two or three. Each side at one point in time talked about discovery. I know we have plans for some written discovery. To suggest a schedule that's much more compressed with this, I think, would run the risk of being unrealistic.

So and this -- if you work your way through this, this would likely end up with a hearing in the early -- and, again, subject to Your Honor's availability -- in the July -- early to mid-July time frame. And we do believe this is a four or five-day hearing given where we are.

And, you know, they are today equivocating on what they would do. Before, they were telling us four fact, two to three experts. Now they're telling you, well, we're not sure; we want to see what the debtor has first, and then we'll respond.

I don't see, if that's their position, again, how you

remotely get to a hearing on May 22nd. As you said, it's like three weeks from today. That just seems impossible. So that's fundamentally, Your Honor, where we are on this.

THE COURT: All right. Mr. Winograd?

MR. WINOGRAD: Your Honor, Mike Winograd from Brown Rudnick, proposed counsel to the TCC. Your Honor, there has been a lot of lawyers talking about other lawyers today, and I'm not going to contribute to that.

Here, we now have conversations about who said what on meet and confers and in emails. What Mr. Gordon just said is inaccurate. He failed to read the part where that was explained in the email thread he was looking at.

And what we have said consistently is it is hard for us to say what witnesses we need when it is your case, it is your burden, and it is, in fact, your witnesses that have all the information, so let us know what those -- who those witnesses are. What we said in response -- the response we heard, you need simultaneous -- we need something simultaneous.

And what I responded with was, okay, we can tell you we know that Mr. Kim is going to be a witness at this trial. We think Mr. Murdica will probably be a witness at this trial. But beyond that, we're going to have to reserve. And the other side was fine with that.

With respect to discovery, the only time we said we needed discovery is when we were told, surprisingly, that there

are going to be witnesses with new testimony from the PI hearing. Now, we just said we don't know what that is. But if there's new testimony, we're going to need to know what that is. And then we may have to take some discovery, but it will be limited.

This pushes and emphasizes that they should file their opposition to the motion to dismiss. They've had this work -- this scheme in the works for months. Let them file their motion to dismiss. We can see their arguments. We can see what actually -- what sliver we're actually talking about.

If there is, in fact, a sliver of new things that need to be addressed -- Your Honor talked about experts and financial distress. If we need to address the impact of the termination of the 2021 funding agreement and the new funding agreement, that is a very discrete area that I'm quite confident we could do in depositions in a day and have one or two witnesses -- one witness on either side testify on it.

But, again, if there is new testimony, Your Honor, we are talking about just a sliver that can easily be handled in three weeks, which I'm told in bankruptcy world is an eternity. And at trial -- I believe in debtor's own letter they had suggested it would be -- I don't remember, Your Honor -- two to three, three to five-day -- not a week-long trial.

And, again, as counsel previously suggested, if we get to that hearing, and it appears that we are not going to

get through it in two to three days, and that's all the time Your Honor has, we can continue the hearing or address it at that point. But at this point, it is premature to push off the hearing under the statutory time period. Thank you, Your Honor.

THE COURT: Mr. Satterley?

MR. SATTERLEY: Very briefly, Your Honor.

THE COURT: Yes.

MR. SATTERLEY: So a week or so ago, I did participate in a meet and confer, and I asked that very question. What witnesses? What experts? Are you going to have a medical expert that's actually going to look at the records -- the pathology records to see if these are frivolous cases or real cases? And they said we'll let you know. I think they said we don't know.

So from the get-go, I've been asking that question. I wasn't on the Friday meet and confer, because I was busy deposing Target in Valadez's case. So I don't know what was discussed in any great detail on the phone.

But the bottom line is, we know from the depositions we took with the preliminary injunction and the testimony of Mr. Kim and Mr. Dickinson that LTL -- nobody -- no board member, nobody made any estimate of future liabilities at any point in time. And so I think it's improper for them now to try to hire somebody to backfill what they should have done in

the beginning before they filed this on April the 4th, is to actually do what a board of directors should be doing, is estimating their liabilities. They didn't do it. So it should be a pretty simple trial, Your Honor.

THE COURT: All right. Well, the fact is, there are constraints on my calendar that are unavoidable. What I was going to suggest -- and this will dissatisfy -- not satisfy probably anyone -- is that I can carve out four days. Last time it was four days, and the fifth was the preliminary injunction. I don't see why it should be more than that. It probably should be less than that.

But I can carve out June -- the week of June 12th. It's three weeks after -- I think it's three weeks, roughly, after the motion is calendar, which is not excessive. It's after the Memorial Day weekend, which we all have to take into account. It gives time for the parties to do discovery, limited.

What I'm going to suggest is I will carve out that week. Why don't you engage in another meet and confer about a schedule. If the parties can't agree, we can talk about it. We'll be together on Tuesday.

So as of now, based on the motion filing, there's -- opposition, I guess, would be due May 16th, the week before the motion on the 23rd. That's normal local rules. Obviously, that's all subject to discussions.

I think what would make the most sense -- Mr. Gordon, is the debtor in a position to identify, at least initially, its prospective witnesses?

MR. GORDON: We're in a position, I believe, to identify the fact witnesses. As I said, we are (sic) prepared to do that yesterday. The experts are still working on that.

THE COURT: All right. Well, then --

(Counsel confer)

MR. GORDON: Excuse me?

MR. MAIMON: I believe they should have had the experts when they filed, Your Honor.

MR. GORDON: And why is that?

MR. MAIMON: Because if you claim financial distress and you made claims in a petition --

MR. GORDON: Yeah.

MR. MAIMON: -- that Mr. Kim asserted to, they should have been prepared.

MR. GORDON: Thank you.

THE COURT: I don't see in the petition where it requires financial distress in the petition. Obviously, you identify -- there's a lot that goes into the petition. But I'm not familiar with that check box.

Identify your fact witnesses by close of business tomorrow. We're going to move the process along a lot better if you can identify your expert witnesses in short term. Why

don't we conference this on Tuesday.

If you all tell me the week of June 12th is not acceptable -- we can proceed on the 23rd. I can make a ruling that will not stand up either way, because it probably is just going to be remanded, and we're going to be back here. And I'm not sure what anybody's accomplished if they're looking to save time.

MR. MOLTON: Judge, we'll take those dates.

THE COURT: Okay. All right. Well, then why don't you talk and work it out. If not, we can talk about it on the 9th. All right?

MR. GORDON: Your Honor, Greg Gordon.

THE COURT: Yeah.

MR. GORDON: Just one thing. I mean, obviously, we'll comply with the fact witnesses. I would say to Your Honor, though, we would want to reserve our rights. We're obviously doing that in a vacuum, not knowing what their case is going to be. I mean, they put it all on us, but this is a two-way street. And so we'd reserve our rights to supplement that as need be based on whatever we see from the other side.

THE COURT: I'm not asking for commitments.

MR. GORDON: Thank you.

MS. BROWN: And, Your Honor, can I raise one issue?

THE COURT: Yes.

MS. BROWN: I very much on behalf of my client would

like to participate in the motion to dismiss hearing, but I will now --

THE COURT: Well, you'll be done with that trial in California.

MS. BROWN: -- be -- unfortunately, Judge, we'll probably just be halfway through. And so, Your Honor, that raises a problem for my client. I can't be in two places at once.

MR. SATTERLEY: They have 11 lawyers.

MR. MAIMON: And Mr. Satterley won't be here either.

MR. SATTERLEY: Yeah. I won't be here. They have 11 lawyers against me, so I think they've got enough. And so, Ms. Brown, she can -- Mike Brown, who's actually also lead trial counsel, has tried a lot of J&J cases. They've got King & Spaulding, Skadden Arps, Nelson Mullins, another law firm. There's no reason to have this motion to dismiss to be any way conflicted by Valadez.

THE COURT: I can't dictate what goes on in this court based on another court at least a month in advance. Let's see what happens and what -- where we're going as far as agreed dates and time frames. It could very well be that you're not needed out there on a particular day that's here. So we'll play it by ear, at least at this juncture.

MS. BROWN: Thank you, Your Honor.

THE COURT: So other than carving out that week, I'm

going to leave it -- I'm going to ask you all to engage in another meet and confer and see what can be agreed upon.

Let's talk about -- well, what else is on the agenda? There were some items -- let me address, if I may, I received correspondence from Weitz & Luxenberg regarding the scope of the stay on post-verdict matters. For the benefit of all, the Court's concern is always -- has been liquidating claims --

MS. BUSCH: Your Honor?

THE COURT: Counsel?

MS. BUSCH: Lisa Busch from Weitz & Luxenberg. We were pretty forward on those papers. I don't know if you need me to give you any more enlightenment on that.

THE COURT: No. I was going to just give you the Court's assessment of what was intended with the Court -- with the order that's in place.

MS. BUSCH: Okay. Thank you.

THE COURT: And that's -- the Court is -- has been concerned with liquidating claims outside of bankruptcy. And that would include the appellate practice. I included that language in the opinion that I published. So the stay remains in effect as to trials, post-trial -- and including post-trial activity and appeals, except if there's bonds in place. I think that was carved out.

So that should address that concern. Again, everybody is free to seek relief by motion if necessary.

We had some confidentiality issues on the agenda.

(Counsel confer)

MR. WINOGRAD: Your Honor, there were three other issues that were addressed in the letters back and forth between the parties: the confidentiality designations by LTL, a common interest issue on the termination of the 2021 funding agreement as between LTL and J&J, and then communications between the TCC -- the discoverability of communications between the TCC and the United States Trustee since January 30 of 2023.

Those were addressed, at least in part, in the letters. And I would leave it to your Court. I'm prepared to talk about all of those, but I'd -- whatever your Court would like to hear today.

THE COURT: Well, is the debtor prepared to discuss it? I couldn't tell if there was a request to having briefing on any of the issues, especially the common interest issues. I thought there was an inclination to have additional briefing.

MR. GORDON: Greg Gordon on behalf of the debtor. You know, I think the question is what's the best use of the parties' time. On confidentiality, what happened there, which happens in all these cases, when we took these depositions in a very compressed time frame in connection with the PI, much was designated as confidential, both deposition testimony as well as documents, with an understanding that we'd go back and

revisit those issues.

And we've had a further exchange of correspondence on that where we basically indicated we were prepared to forego all the confidentiality designations except for one, which was we believe we should preserve the confidentiality of the exhibit to the term sheet. So you have the plan support agreements, you have the term sheet, and then the exhibit.

And the exhibit has very sensitive information on the valuation on the grid for the claims. And that's never been made public. It's never been talked about in court. We view that public disclosure of that at this point as potentially damaging to further negotiations at this point in time.

So we were prepared to basically forego every --

THE COURT: Forego all other objections --

MR. GORDON: -- everything else except for that. And the only other condition was we want a new protective order that's modeled after the protective order in the old case. But the one difference is this one would have a use restriction that would make clear that these -- information and discovery would be for purposes of this bankruptcy case only.

And the reason for that is the concerns we've had about this information being used in the tort proceedings now that are moving forward in some respects. We also had the problem with some leakage of documents produced in discovery to the press in the prior case which was a problem. And so those

are the only two things.

We said, otherwise, we'll forego everything else. We just want to protect the exhibit to the term sheet, and we'd like that use restriction in the protective order.

THE COURT: All right. Mr. Winograd?

MR. WINOGRAD: Your Honor, Michael Winograd again from Brown Rudnick, proposed counsel for the TCC. Number one, Your Honor, I do understand that during the depositions swaths of information are typically by, you know, just automatic reaction, knee-jerk reaction designated confidential. There was about 15 pages of those that we challenged.

We are grateful that the debtor has agreed, albeit with conditions, which I'll address in a moment, to de-designate all of that other than one attachment. We don't think that should be conditioned on anything. It's either confidential or it's not. We don't think any of it's confidential. We think the fact that they're willing to de-designate all of that proves that point and should all right now be de-designated as nonconfidential.

With respect to the attachment to the term sheet, Your Honor, if Your Honor would like briefing on that, that's fine. But I will note for Your Honor that that attachment was discussed in open court. In fact, one, if not two, counsel got up and gave the number -- the amount of money that their clients would be entitled to under the formula. So it was

absolutely discussed without objection. There was no objection to confidentiality when it was discussed.

That term sheet and those calculations are also the basis of all these public statements that have been made about folks supporting that term sheet. It sort of seems ironic that you would say all these people in the public, tens of thousands, support it but we won't tell you what those terms are. So we would oppose keeping even that one fraction of one document confidential.

With respect to the use, Your Honor, the -- and I will not speak for the United States Trustee. But the U.S. Trustee has stated in open court it would not agree, and I think it said it could not agree, to any use restriction. But there's no basis -- it was not in the first PO, and we just don't see any basis for a use restriction now.

This is all relevant information, and it should be able to be used in other trials that are -- to avoid duplication and a deficiency. Thank you, Your Honor.

THE COURT: Mr. Satterley?

MR. SATTERLEY: Yes, Your Honor. Joe Satterley, Kazan McClain Satterley & Greenwood. I actually filed a brief on this very issue which was not responded to. I don't know if they're intending to respond to it.

And I specifically addressed the fact that once exhibits are used in court and marked and introduced before

Your Honor, they're no longer confidential. Your Honor received them. There was no objection at the time. I cited to numerous cases. I'm not going to argue all those cases today.

But those -- that includes the PSA, the term sheets, the board minutes, the two different board minutes. So there's four specific exhibits that were received into evidence. And I did argue in closing argument that Mr. Valadez, under the terms, would only be entitled to $50,000. And that's what the calculation is. So I think Your Honor should deem those matters -- those documents for sure not confidential.

Second, they criticize us for not "getting our clients on board with this plan." Well, right now, under their confidentiality, we can't even explain to our clients the details of this, or they would potentially be -- we'd be in violation, I guess, of the confidentiality order is what --

So it would hinder -- not that I'm going to agree to a $50,000 settlement for a young man or anything like that. But it would hinder the ability to even negotiate in mediation. Because how do you do that? How do you actually explain to a client what they might get under a plan when all the terms are confidential and doesn't allow you to talk to your clients about it?

Finally, with regards to the depositions, I'm glad they're de-designating them, no longer confidential. As far as the "use," the Federal Rules of Procedure and the Federal Rules

of Evidence control that. I mean, a deposition can be used in another proceeding if it meets certain things. If it's -- and another court, maybe not Your Honor, another court, another federal court, the MDL may have to decide. There's a whole bunch of body of law that on use of prior testimony.

Johns Manville depositions -- the Sixth Circuit has ruled on which depositions of Johns Manville from the 1980s could be used in subsequent proceedings. So there's a whole body of law on that. And so we would object to an order that says these depositions cannot be used. We would just say follow the rules. Thank you, Your Honor.

THE COURT: Thank you.

Mr. Thompson?

MR. THOMPSON: Okay. So Clay Thompson with Maune Raichle on behalf of Katherine Tolleson. I also filed a joinder to Mr. Satterley's motion. It's at Document Number 99.

First of all, Your Honor will remember with Reuters there was a lot of fast and loose allegations from Jones Day about people leaking stuff to Reuters. And then it turned out that none of the stuff that was given to Reuters was confidential. And then Jones Day was like, oh, sorry, you know, never mind. So nothing bad happened, and Reuters got involved. And I don't know why the debtor is so against the First Amendment.

Here's some things that Mr. Haas said, okay? And I

attached it to my appendix, which I will add to the longer this case lasts. "As demonstrated by the recent hearings, there is" -- this is April 24th -- "there is significant support for the plan including from major plaintiffs law firms representing the vast majority of claimants. Opposition to the plan is driven by firms who have a profit motive to remain in the tort system that is at odds with the interests of their clients."

April 20th: "We are confident that the vote will overwhelmingly support the proposal as it presents the only equitable path forward. The proposal commits 8.9 billion to claimants whose claims otherwise would languish in the tort system for decades and, based upon the trial record, likely not receive a single dollar."

He issues one of the -- and he's free to do that. I don't have any problem with J&J issuing press releases. What I have a problem with is them issuing press releases about how great the plan is and then telling you that the dollar amounts in the plan -- the term sheet is where the dollar amounts are. Mr. Gordon doesn't want those to get out, because they're terrible, right?

So you can't -- it's a sword and a shield. If they're going to say to the public 8.9 billion, great deal, greedy plaintiffs lawyers are against it, that's fine. But they can't then hide behind confidentiality, and the numbers have to be disclosed.

And so I don't have to get up again, just to make a record, I appreciate Your Honor's ruling on the mediation. We would have objected to that. I would ask that Mr. Russo and the other mediator whose name I forget be asked to include my firm in that and Mr. Crouch and everybody else at this time. I think that was it. Thank you, Judge.

THE COURT: All right. Thank you.

I don't know what I'm hearing. Let me -- just bear one moment.

Mr. Ruckdeschel? I'm sorry if I butcher your name.

MR. RUCKDESCHEL: No, that's fine. Thank you, Your Honor. Very briefly. Jonathan Ruckdeschel on behalf of Paul Crouch. The debtor has provided no legal authority for its sweeping request about restricting use. And saying, well, things that are taken in this case or discovered in this case can only be used in this case, there's no legal authority for that.

Sworn testimony is sworn testimony. You know, statements under oath are statements under oath. And as Mr. Satterley said, the federal rules cover that.

You know, there's simply no authority that's been submitted. Nor am I aware of any that would allow for a sweeping entry of such an order that says everything that happens here stays here. This isn't that old ad campaign for Las Vegas. What happens in LTL stays in LTL, you know? And

it's just baseless. It's baseless under the law.

And with respect to confidentiality of the term sheet, you know, I think we heard everything we needed to hear with what Mr. Gordon just said, which is, Judge, if you let people know what the numbers are in the term sheet, it's going to undermine the support for our plan. Yeah. No doubt. Because it's outrageous.

You know, if there's any other exposure for somebody with mesothelioma, they get one percent, $5,000. Well, yeah. That's pretty outrageous, because that's not how it works in the tort system. So, you know, the fact that if you let people know what this scheme is, they're not going to support it is not a basis for holding it confidential.

And I understand the original order here was done in the beginning. We had the informal hearing. It wasn't transcribed. And the Court entered an order saying things could be designated as confidential.

But the default has to be not confidential. And if somebody's going to designate something as confidential, they should have to come to the Court, designate it, and then come and support and each one. If there's a dispute, it should be their burden, not ours to challenge.

That's the way that American society works. That's the way this Court should work. And I ask that you not continue this confidentiality scam.

THE COURT: All right. Thank you. Thank you, counsel.

Mr. Gordon?

MR. GORDON: Just I think, Your Honor, three points. You know, one thing with respect to the exhibit to the term sheet -- and just to step back. Just to be sure the record's clear, we're agreeing to -- we've proposed to de-designate everything with that one exception.

And the arguments I heard back were, well, you can't do it, because it was already disclosed in court. And I was trying to rack my brain to remember when that happened. Mr. Satterley just explained it. I remember him saying the 50,000. I didn't know where he got it from. He didn't attribute it to that in particular.

But, frankly, that was a violation of the confidentiality designation. He knew that document was designated confidential. So that would not be a basis to not permit its confidentiality.

His second point that we need to be able to share it with the claimants, well, there's nothing in the protective order that would prevent him to do that. I think -- prevent him from doing that. I think there may be a requirement that his client would have to agree -- or his clients would have to agree to abide by the terms of the confidentiality. But it's not a block in terms of sharing the terms with a client. So

that's a false argument.

And then in terms of the use restriction, the only other thought I have on that, if it would make this an easier issue, perhaps short of what we suggested, if instead we had an order that said use is restricted to this case subject to the rights of any party who feels the need to use it for some other purpose to make a request. And the request could come to us. We would either agree with it or not.

And if we ultimately can't agree, then Your Honor could decide whether a request to use this information outside of this case is a proper one or not. That would at least put some kind of governor on this and prevent some of the things that we're concerned about, and number one of which probably is if this case ends up being tried in the tort cases that are now going forward to some extent in the tort system.

THE COURT: Help me out. Before you go -- Mr. Satterley, I'm trying to get a sense of what motion on the agenda -- or am I -- or are we discussing the letters that were asked to be considered motions? Do you know offhand on the agenda --

MR. GORDON: No, I don't think there's a particular motion on the agenda. I mean, we had an agreement back at the time the discovery was being taken, including the depositions, that the party -- parties would --

THE COURT: Right.

MR. GORDON: -- abide by the existing protective order in the old case, understanding that a new order would be prepared. And we've prepared it and sent it to the other side.

And then, otherwise, the TCC sent us -- I can't remember whether it was a letter or an email, but basically challenging a number of the designations that had been made. And then we responded with the proposal that I described to Your Honor.

So you're correct. There's not a motion --

THE COURT: On the agenda was the debtor's motion to seal exhibits. I didn't know if this was part of it or not.

MR. GORDON: Well, that's based -- and there's other motions to seal as well.

THE COURT: Right.

MR. GORDON: I think they're all based on the understanding that existed before we were getting to this point of trying not hash out what the extent of the confidentiality would be.

THE COURT: All right.

MR. GORDON: So the parties were recognizing that items were designated as confidential. And, therefore, abiding by the prior protective order, they needed to seek relief to see all the documents.

THE COURT: All right. You can come up, Mr. Satterley. What I'm going to --

MR. SATTERLEY: I just got two minutes, Your Honor, less than --

THE COURT: Yeah. Sure.

MR. SATTERLEY: Two points. I was just accused of violating a confidentiality order. The TCC moved into evidence -- Mr. Jonas moved into evidence the term sheet. And I've never in 27 years trying cases -- when something comes into evidence, I'm allowed to comment upon it in closing arguments. I wasn't violating any aspect of that. I believe once it came into evidence, it's a public record under the law. And that's what my brief addressed.

Second point, I stand by my arguments on use restrictions. I had another point, but I forgot it.

THE COURT: All right.

MR. SATTERLEY: Thank you, Your Honor.

MR. MAIMON: If I can make a suggestion, Your Honor?

THE COURT: Suggestions I'll take.

MR. MAIMON: If the debtor has agreed to de-designate everything except that one attachment, let's go that way. And they can make a motion for Your Honor to find that the attachment deserves confidential treatment, and then we can treat it in the ordinary course.

THE COURT: All right.

MR. SATTERLEY: I would object to that, because I already filed a brief on this issue.

THE COURT: Mr. Sponder?

MR. SPONDER: Your Honor, thank you. Jeff Sponder form the Office of the United States Trustee. Your Honor, there is no basis for a use restriction, especially on the United States Trustee. I'm not sure if that's what's being asked here. We weren't privy or party to the protective order in the first case. We're not going to be party or privy to the protective order in the second case.

The new proposed restriction, I'm not sure if that was meant for those -- it was going to be the protective order for those parties or if that was meant for the entire case. That's why I stood up. If it's meant for the entire case, we definitely object, Your Honor. Thank you.

MR. SATTERLEY: My second point I forgot to make is this becomes incredibly burdensome, because all these pleadings now are blacked out in part. And Your Honor gets -- and we don't know exactly -- we have to call around, say can I -- I signed the confidentiality, can I get a unredacted version? And I'm writing emails to the U.S. Trustee. I'm writing emails to other counsel. And it's all --

So you got two pleadings. One is partially blacked out. One's not blacked out. It's a big mess. Once something --

THE COURT: Well, I agree. It's burdensome on the Court too. We get all these orders shortening time on the

motions with every motion. Every motion becomes two motions.

Here. Here's how we're going to move forward. We're going to accept the debtor offer as to eliminating the confidentiality restrictions on all documents except the document they've just identified, which is the exhibit, for now. I will ask, in the next seven days, anybody wants to make an additional submission on that can do so.

So the only confidentiality designation -- it exists only as to the exhibit to the term sheet, if I understand it correctly. As to the use, we will carve out the U.S. Trustee. The use will be limited to this case. However, a party simply must, before seeking permission to use it, contact the debtor. And it's the debtor's burden to come before the Court to restrict it. All right?

MR. SATTERLEY: Just so we're clear on what we're talking about, we're only talking about the depositions that were taken prior to the preliminary injunction? That's what we're talking about?

THE COURT: Is that correct? No.

MR. GORDON: We view it as broader than that. It's a use restriction generally, Your Honor.

MR. SATTERLEY: No, no, no, no, no. That's outrageous, Your Honor. For example, depositions of Mr. Kim from -- that I took October of 2021 in North Carolina that's been -- how is that possibly a part of this? This is --

THE COURT: All right. This has gone --

MR. SATTERLEY: This is a oral --

THE COURT: -- beyond the Court's understanding of what was being -- was --

MR. GORDON: Well, it's discovery in this case. And if you want to take it --

MR. SATTERLEY: No.

THE COURT: Discovery in this case?

MR. GORDON: Yes.

MR. SATTERLEY: Oh, LTL 2?

THE COURT: This case is just LT (sic) 2. That's what I'm trying to clarify.

MR. GORDON: Yeah.

MR. SATTERLEY: Oh, so there's only been -- the discovery in this case has been those depositions that occurred right before the preliminary injunction. I thought I was hearing counsel say everything that was done in LTL 1 would apply to the use. And he -- counsel's now --

THE COURT: That's what I was -- that's what I'm looking to clarify. It's just discovery in this case, which is the --

MR. GORDON: Right.

THE COURT: -- in advance of the preliminary injunction?

MR. GORDON: We're not going back in time, as far as

I know.

THE COURT: Okay.

MR. SATTERLEY: So but I'm further confused, because the way counsel argues, it's not just simply use in another court proceeding. Counsel says you can't use it for anything. You can't share it with the media. You can't share it with -- if, you know -- pardon? I'm sorry. So I just want --

THE COURT: Well, there's -- right now, we're not -- this is supposed to be incorporated in a protective order.

MR. GORDON: Right.

THE COURT: There is no such language, correct? You have not made a proposal.

MR. GORDON: No, I think we have made a proposal. It's sitting with the other side, I think.

THE COURT: I haven't seen it, right?

MR. GORDON: Correct. You have not.

THE COURT: All right.

MR. SATTERLEY: And the problem is, the other side is not necessarily defined, because there's lots of other folks here on the other side. So --

THE COURT: Well, then --

MR. SATTERLEY: -- but I think what we should do, Your Honor, is you -- they've stipulated to everything. I think we should -- if they want to make a motion under the law on this use, they should do that so that we can respond and

show Your Honor the law that's contrary to what they're suggesting.

I mean, sworn testimony that's not "confidential," there's no way you're not --

THE COURT: All right.

MR. SATTERLEY: -- allowed to share it with your friends, your family --

THE COURT: Unless --

MR. SATTERLEY: -- your other attorneys, the media.

THE COURT: Well, unless the parties -- thank you, Mr. Satterley. Unless the parties can agree to language in a confidentiality order, then it has to come by motion in front of me. So I'll leave it at that.

MR. SATTERLEY: Thank you, Your Honor.

THE COURT: I was trying to get you there. But if you can't, file the motions.

UNIDENTIFIED SPEAKER: Yes, Your Honor.

THE COURT: All right. Is there anything else we have to discuss this afternoon?

MS. BROWN: Just one thing to put on the record, Judge, because I want to be totally transparent. I've just learned for that June week, Your Honor, that I understand we may revisit, Mr. Murdica will be out of the country. I understand we're still far away, but I didn't want to be accused of springing that at the last minute. So we can

discuss that with the Court at a later date if he's needed. But I did want to be transparent.

MR. MAIMON: We can always --

MR. SATTERLEY: We can meet and confer on that, Your Honor. Unavailability sometimes --

MR. MAIMON: We can preserve testimony. It's always done.

THE COURT: I'm just looking at my calendar. The next block of dates I have would be -- so that you all know, is Tuesday, June 20th through Thursday, June 22nd.

MS. BROWN: Okay.

MR. SATTERLEY: And we would request Your Honor maintain the June 12th. And we can meet and confer regarding if we -- if he's even going to be a witness and if we need to preserve his testimony in some fashion. We've done it thousands of times in other cases.

THE COURT: We'll talk again on the 9th.

MR. MAIMON: Thank you, Your Honor.

THE COURT: Thank you, all.

MS. BROWN: Thanks, Judge.

THE COURT: Take care. We are adjourned.

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C E R T I F I C A T I O N

We, DIPTI PATEL, TRACEY WILLIAMS, KAREN WATSON and LIESL SPRINGER, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and to the best of our ability.

/s/ Dipti Patel
DIPTI PATEL

/s/ Tracey Williams
TRACEY WILLIAMS

/s/ Karen Watson
KAREN WATSON

/s/ Liesl Springer
LIESL SPRINGER

J&J COURT TRANSCRIBERS, INC. DATE: May 4, 2023